

No. 17446

United States
Court of Appeals
for the Ninth Circuit

—
NATIONAL UNION FIRE INSURANCE CO.,

Appellant,

vs.

LUISA SANTOS,

Appellee.

—

Transcript of Record

—

Appeal from the United States District Court
for the District of Guam.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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THE [illegible] OF [illegible]

[illegible text]

In the District Court of Guam,
Territory of Guam

Civil Case No. 32-60

LUISA B. SANTOS,

Plaintiff,

vs.

NATIONAL UNION FIRE INSURANCE CO.,
a Corporation,

Defendant.

PRETRIAL ORDER

I. Pleadings.

Plaintiff filed her complaint on the 22nd day of April, 1960, alleging that her residence in Merizo, Guam, burned on or about the 1st day of March, 1960, and that the dwelling and contents were insured by defendant in the amount of \$10,000.00 against loss by fire.

Defendant answered on the 15th day of June, 1960, generally denying the allegations of the complaint and affirmatively alleging fire was caused by the willful acts of the plaintiff; that plaintiff had no insurable interest in the contents of the building; that plaintiff obtained the policy from the defendant by misrepresentation.

II. Discussion at Pretrial Conference.

Pretrial conference was held on July 19, 1960, at 2:00 o'clock p.m., and then continued to July 29,

1960, at 3:00 o'clock p.m. At the pretrial conference, counsel for defendant produced a copy of the insurance policy which was stipulated to be a true copy. Said policy covered the building of plaintiff in the amount of \$8,000.00 and the contents of the building in the amount of \$2,000.00. Counsel for the defendant at the pretrial conference contended that no schedule of lost contents had been furnished to defendant with the proof of loss. Counsel for plaintiff contended that the delay on part of defendant constituted a waiver for furnishing such information under Section 43405 of the Government Code of Guam. List of contents was furnished to counsel for the defendant and the court on August 2nd, 1960.

III. Issues.

1. Whether the fire was caused by perils insured against or whether the fire was caused by acts of the plaintiff or her agents.
2. Whether the plaintiff obtained the policy in question by any material misrepresentation.
3. Whether the plaintiff had an insurable interest in the furniture and fixtures lost in the fire.
4. Coverage under the policy as to the building and the contents.

IV. Stipulations.

1. It was stipulated that the Proof of Loss filed by the plaintiff and the copy of the insurance policy may be received in evidence without objection.

2. It was stipulated that there was a fire which totally destroyed plaintiff's residence and the contents although it is not admitted by defendant what the contents were nor the value of said contents.

V. Witnesses for the Plaintiff.

1. The plaintiff will testify as to value of the house and contents destroyed by the fire, and as to representations made by her at the time of the issuance of the policy.

2. Mr. J. Perez of the Bank of America will testify as an expert witness on the value of the house at the time of the fire.

3. Mr. Al Carbullido, real estate broker, will testify also as an expert witness as to the value of the house at the time of the fire.

VI. Witnesses for Defendant.

1. Mr. Amado Jujo and Mr. Vicente Guerrero will testify as to representations made by plaintiff at the time the policy was issued and as to their inspection of the premises.

2. Mr. Danishmand will testify that he examined the house shortly after the fire and noticed the odor of kerosene. A fire lieutenant from the Guam Department of Public Safety will similarly testify.

3. Mr. Al Brooks of Marianas Electric and Supply Company will testify as to the character of the plaintiff where relevant.

4. A representative from Radio Center will testify similarly to Mr. Brooks.

Additional witnesses may be noticed not less than five days before the trial by either party in writing.

VII. Order.

The above stipulations are approved and the cause is set for trial by jury on the 30th day of August, 1960, at 9:30 o'clock a.m.

/s/ EDWARD P. FURBER,
Designated Judge,
District Court of Guam.

Approved:

/s/ W. SCOTT BARRETT,
Attorney for Plaintiff.

/s/ E. R. CRAIN,
Attorney for Defendant.

[Endorsed]: Filed August 11, 1960.

[Title of District Court and Cause.]

VERDICT

We, the Jury, find in favor of the plaintiff, Luisa B. Santos, and against the defendant, National Union Fire Insurance Company, a corporation, in the sum of \$8,000.00 for real property, and \$2,000.00 for personal property, total of \$10,000.00.

Date: October 11, 1960.

/s/ JOHN L. GILMAN,
Foreman.

[Endorsed]: Filed October 11, 1960.

[Title of District Court and Cause.]

OPINION

This is an action by plaintiff Luisa B. Santos to recover, on an insurance policy, for the loss by fire of certain realty and the contents thereof. A jury returned a verdict in favor of plaintiff in the amount of \$10,000. Plaintiff now seeks a judgment, not only for the \$10,000, but also for additional damages and attorney's fees under the following statute:

In all cases where loss occurs and the insurer liable therefor shall fail to pay the same within the time specified in the policy, after demand made therefor, such insurer shall be liable to pay the holder of such policy, in addition to the amount of such loss, twelve per cent (12%) damages upon the amount of such loss, together with all reasonable attorney's fees for the prosecution and collection of said loss * * *. Guam Gov. Code §43407, Pub. L. No. 102, 4th Leg., 4th Sess. (July 1, 1959).

Defendant is resisting these additional statutory amounts.

The facts bearing upon the present controversy are undisputed. The plaintiff's loss occurred on March 1, 1960. A proof of loss was furnished the defendant by the plaintiff on March 30, 1960. On April 22, 1960, the present action was commenced. A stipulation was filed on May 2, 1960, whereby it was agreed between the parties that the defendant should have "to and including the 1st day of June, 1960, to answer or otherwise plead." Defendant's answer was filed on June 15, 1960, and it admitted therein the allegations contained in paragraph seven of the complaint, which paragraph stated, "That though demand was made by plaintiff, defendant has not paid the said loss, nor any part thereof, but refuses to do so." The provision of the insurance policy dealing with the time within which defendant was obligated to pay the loss reads as follows:

The amount of loss for which this company may be liable shall be payable 60 days after proof of loss * * *.

The plaintiff contends that the defendant, by admitting in its answer the allegations of paragraph seven of the complaint, "That though demand was made by plaintiff, defendant has not paid the said loss, nor any part thereof, but refuses to do so," defendant has admitted that it had denied all liability under the policy. This is not necessarily so. By admitting the truth of this language, defendant only admits that it had refused to pay the amount demanded by the plaintiff, not that it had contended

that it was without any liability whatsoever. Moreover, plaintiff herself admits, in her "Memorandum on Statutory Penalties," that the defendant, prior to the commencement of this action, had offered to pay at least \$4,000 in compromise of the plaintiff's claim.

Government Code of Guam §43407 was adopted without substantial change from an Arkansas statute, Ark. Stats. §66-514, and for that reason Arkansas decisions construing that Arkansas statute are persuasive. Cf. *Sauget v. Villagomez*, 228 F. 2d 374, 376 (9th Cir. 1955).

The statute under consideration is "highly penal and is to be strictly construed." *Equitable Life Assurance Society v. Hughes*, 152 F. Supp. 187, 195 (E. D. Ark. 1957). It has been said that "if an insurance company denies liability the insured may file suit immediately on the policy" without waiting until the end of the sixty day grace period provided for in the policy. *Willis-Reed Lumber Co. v. New York Underwriters Ins. Co.*, 146 F. Supp. 74, 80 (W. D. Ark. 1956). However, where, as in the present case, the insurer does not deny all liability, but, rather, makes a compromise offer, and the insured commences an action thereafter, but before the sixty day grace period has expired, the rule is that the action is premature and the insured cannot recover the statutory penalties or attorney's fees. *Id.* at 80-81. In light of this rule, plaintiff Luisa B. Santos is precluded from recovering the penalties

and attorney's fees provided for in Government Code of Guam §43407.

The plaintiff may prepare a judgment in conformity with this opinion.

It is so ordered.

Dated at Agana, Guam, this 15th day of December, A.D. 1960.

/s/ EUGENE R. GILMARTIN,
Judge,
District Court of Guam.

[Endorsed]: Filed December 15, 1960.

In the District Court of Guam
Territory of Guam
Civil Case No. 32-60

LUISA B. SANTOS,
Plaintiff,
vs.

NATIONAL UNION FIRE INSURANCE CO., a
Corporation,
Defendant.

JUDGMENT UPON VERDICT

This matter having come on for trial on the 11th day of October, 1960, before a jury, the above-named plaintiff appearing by W. Scott Barrett, her attorney, and the above-named defendant by E. R. Crain, its attorney. A jury of twelve persons was regularly impaneled to try said action and witnesses

on the part of plaintiff and defendant were sworn and examined. After hearing the evidence, the arguments of counsel, and instructions by the Court, the jury retired to consider their verdict and subsequently returned into court, and being called answered that they returned a verdict in favor of the plaintiff in the amount of \$10,000.00

And the Court having rendered its opinion on the 15th day of December, 1960, holding that plaintiff is not entitled to 12% penalty and attorneys' fees as provided for in § 43407 of the Government Code of Guam;

Now, therefore, it is hereby ordered, adjudged and decreed by this Court that the said plaintiff, Luisa B. Santos, do have and recover of and from the said defendant, the sum of \$10,000.00 with interest thereon at 6% per annum from the date of verdict until paid;

Now, therefore, it is further ordered, adjudged and decreed that Luisa B. Santos, plaintiff, is entitled to no penalty or attorneys' fees pursuant to § 43407 of the Government Code of Guam, but is entitled only to the amounts herein stated together with her costs herein taxed at \$37.00.

Dated: Agana, Guam, this 13th day of January, 1961.

/s/ EUGENE R. GILMARTIN,
Judge, District Court of
Guam.

[Endorsed]: Filed January 13, 1961.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the defendant, National Union Fire Insurance Company, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on January 13, 1961.

Dated this 9th day of February, 1961.

/s/ E. R. CRAIN,
Attorney for Defendant.

[Endorsed]: Filed February 9, 1961.

District Court of Guam
Territory of Guam
Civil Case No. 32-60

LUISA B. SANTOS,
Plaintiff,
vs.

NATIONAL UNION FIRE INSURANCE COMPANY, a Corporation,
Defendant.

TRANSCRIPT OF PROCEEDINGS

October 11, 1960

Appearances:

W. SCOTT BARETT of
TURNER, BARRETT & FERENZ,
Attorneys at Law,
Agana, Guam,
For Plaintiff.

E. R. CRAIN,
Attorney at Law,
Agana, Guam,
For Defendant.

Be It Known that on this 11th day of October, 1960, at the hour of 9:30 a.m., there appeared the above counsel before the Honorable Eugene R. Gilmartin, Judge, District Court of Guam, in the Courtroom, Guam Congress Building, Agana, Guam.

That at said time and place there transpired the following:

The Clerk: Your Honor, the roll call has been taken, 45 members of the panel answer present.

The Court: Call the case, Mr. Clerk.

The Clerk: Civil Case No. 32-60, Luisa B. Santos, plaintiff, vs. National Union Fire Insurance Company, a defendant, a corporation, defendant, coming on for trial to a jury.

The Court: Both sides ready?

Mr. Barrett: Ready, your Honor. [1*]

Mr. Crain: Ready.

The Court: Call a jury.

(Jury of twelve duly empaneled and sworn.)

Mr. Barrett: I believe the two exhibits stipulated in evidence have been marked.

The Court: They have not been marked.

Mr. Barrett: I would like to have them marked.

The Clerk: You mean Plaintiff's 1 and 2?

The Court: You may make your opening statement now, Mr. Barrett.

(At this time certain documents were marked Plaintiff's Exhibits 1 and 2, respectively, in evidence.)

Mr. Barrett: Your Honor, members of the jury, as the Court has stated, my name is Scott Barrett, I represent the plaintiff as her attorney. In October of 1959, Mrs. Santos, the plaintiff, at the urging of an agent of the defendant, Mr. Guerrero, finally decided to take out a policy of insurance, both on the contents of the store which she was operating at the time and on her residence in Merizo. The evidence will show that the amount of the policy was at the suggestion of the agent of the company, which is the defendant. In March of 1960, four o'clock in the morning on the 1st day, Mrs. Santos, who was in her bedroom, together with Mr. Gregorio Sanchez; now Mrs. Santos and Mr. Sanchez are not married, we are not trying to hide that; she had been living with him for some time; both of them are divorced; Mrs. Santos' three children are also asleep in the bedroom of the house, in the bedroom adjoining. At four o'clock in the morning, they were awakened by smoke which apparently had filled the house and Mrs. Santos and Mr. Sanchez immediately ran to the children's bedroom. There are [2] three children there, the oldest being thirteen years of age, the daughter of Mrs. Santos, another younger girl who is being taken care of by Mrs. Santos for some time, and the baby apparently which the mother did not

want but Mrs. Santos had been caring for, two months old. She took the children, she carried the baby, tried to run out the door. The house is of such a nature the front door is in the front part of the living room and the back door is straight through the house in the kitchen and the bedrooms are all windows, there is no exit. They found, in trying to go through the living room, it was filled with flames, they couldn't get out. They ran back in the children's bedroom; Mr. Sanchez picked up a chair and knocked out a window and the louvers that were there also and they were able to get out the window.

Thereafter, Mrs. Santos was advised she should go to the company and give notice, but before she did that the agents of the company came down to look at the damage. They had apparently heard from someone else there had been a fire. She talked to a Mr. Aquino at the scene of the fire some two or three days afterwards and he advised her to bring in a list of the contents that had been destroyed. This she did and then filed a proof of loss, which was incomplete. It has been stipulated by counsel that it will be in evidence, as will the policy. You can look at it. The policy was written for \$8,000 for the house and \$2,000 for the contents. The company refused to pay the full amount of the policy and suit was therefore brought. The company has raised certain defenses of misrepresentation and arson, which, of course, is their burden to prove. We contend there was no such thing, the fire was of unknown origin, accidental, the policy should be paid. Whether or not it [3] is, will be left to your

discretion in finding the facts. I know you will listen to them very careful. Thank you very much.

The Court: Mr. Crain, you wish to make a statement at this time?

Mr. Crain: No. May we approach the bench, please?

The Court: Yes.

(Counsel and the reporter approached the bench where the following transpired out of hearing of the jury:)

Mr. Crain: I thought it was improper for me to interrupt while Mr. Barrett was making his opening statement, but his statement has gone so far afield from the issues in this case that I feel the jury is already prejudiced and at this time I am moving the Court to dismiss the jury, call it a mistrial.

Mr. Barrett: In what respect?

Mr. Crain: This business about the fire and the flames and the children in the bedroom and the difficulty of getting them out of the house and that sort of thing.

The Court: I don't think that has any materiality.

Mr. Crain: Of course not.

The Court: At the same time, there were probably many things said by counsel in opening statements, either that they cannot prove or may not be material, which would be ruled upon by the Court at the time of the introduction. The general statement to the jury as to outlining the plaintiff's case——

Mr. Crain: This wasn't outlining the plaintiff's case.

The Court: Well, I don't see anything that, what counsel has said during his opening remarks to the jury that would prejudice the defendant, nor the defense in this case. The jury at this point [4] does not know, and I think what Mr. Barrett's remarks were based on, was based on the pleadings in the case. Where it might be considered a little unusual, probably, for him to recite the defendant's case or refer to what the defense might be in the case, yet I don't think, from the remarks he has made at this point, that it is prejudicial to the defendant or the defense in this case and I will deny your motion.

Mr. Crain: Thank you.

(Back in open court.)

Mr. Crain: If the Court please, I will waive the opening statement.

The Court: You waive your opening statement?

Mr. Crain: Yes, sir.

The Court: Call your first witness, Mr. Barrett.

Mr. Barrett: Before that is done, your Honor, I would like to have the two exhibits stipulated in evidence, as marked, introduced in evidence.

The Court: There any objection?

Mr. Crain: Actually, this is the original.

The Court: This in evidence by stipulation. If there is no objection, it may be introduced in evidence and may be marked, the insurance policy may be marked Plaintiff's Exhibit No. 1 in evidence.

Mr. Crain: No objection.

The Court: By stipulation of counsel, Plaintiff's Exhibit No. 2, which will be the proof of loss, may be introduced in evidence.

Mr. Barrett: Mrs. Santos. [5]

LUISA B. SANTOS

the plaintiff herein, took the witness stand on her own behalf, being first duly sworn, was examined and testified, as follows:

Direct Examination

By Mr. Barrett:

Q. Would you——

The Court: Mrs. Santos, keep your voice up so that the jurors can hear you.

And members of the jury, we will probably, from time to——

(Outside interference.)

The Court: See if I can speak above the chimes. From time to time we will have interruptions from outside noises, as you are now hearing them, and if at any time you cannot hear everything that the witness says, just raise your right hand and that will indicate to me that you did not hear the answer and I will have the witness either repeat the answer or have the Court Reporter read the answer back to you. So if there is chimes or aircraft or other outside disturbances during the course of the trial that prevent you from hearing all the testimony, just raise your right hand and I will

(Testimony of Luisa B. Santos.)

know that you didn't hear the answer and I will see that you hear it.

Q. (By Mr. Barrett): Would you state your name, please?

A. My name is Luisa Baza Santos.

The Court: Speak up, Mrs. Santos.

Mr. Barrett: Please speak as close to the microphone as you can.

A. My name is Luisa Baza Santos.

Q. (By Mr. Barrett): And where do you live, Mrs. Santos? [6]

A. At present I was living at Agat.

Q. And where did you live prior to March 1st, 1960?

A. In Merizo.

Q. You are the plaintiff in this case?

A. Yes.

Q. Now did a fire occur at your residence in Agat?

A. My residence was in Merizo.

Q. In Merizo, I beg your pardon. And when did that fire occur?

A. March 1st, 1960.

Q. What time of the day or night did it happen?

A. Around four o'clock in the morning.

Q. Where were you at the time that you first noticed there was a fire?

A. I was in my bedroom.

Q. And what did you first notice?

A. I was awakened by the smell of smoke.

Q. Was there anyone in your bedroom with you?

A. Yes.

Q. Who was that?

A. Mr. Gregorio Sanchez.

(Testimony of Luisa B. Santos.)

Q. And what did you and Mr. Sanchez do when you were awakened?

A. We rushed over to the children's bedroom and awake up the children. I grab the baby in my arms.

Q. Where did you go then?

A. We go back to the, we opened the door of the bedroom, tried to go back to the living room but we couldn't get out so we [7] turned back to the children's bedroom then.

Q. Why couldn't you get out?

A. The living room was already on fire.

Q. And you went back to the bedroom, what did you do?

A. Mr. Sanchez tried to break down the window, which he did, and we throw out the children, out the window, myself.

Q. How did he break the window, if you know?

A. By the chair, hitting it with the chair.

Q. What did you do after that?

A. I was calling for help and then I run over to my uncle's house.

Q. Where does he live from your house in Merizo? A. About two blocks.

Q. Now after the fire, did you contact the defendant, the insurance company?

A. No, the fire investigator was down there and he told me that I have to notify the insurance company, then the Commissioner was down there, too, and he told me I have to notify them and told them that if he can do it because I can't go down there.

(Testimony of Luisa B. Santos.)

The next day the insurance company was down there, the adjuster.

Q. Who was there, do you know him by name?

A. Mr. Aquino and one statesider, I don't know his name, and I just know this other one by the name of Henry.

Q. I see. Now did Mr. Aquino say anything to you or tell you to do anything?

A. He told me to come down to his office, which I did three days later, and he told me to, he asked me to make the list of the contents. [8]

Q. Did you do that?

A. I did, I gave it to him.

Q. When did you give it to him?

A. The next day.

Q. Did he say anything at the time you gave it to him?

A. I gave him the list and he told me to come down the next day, which I did, and then he was asking me, he says he has no, he has nothing against the contents, he says he agrees with it and he is willing to pay for it, but he is asking me to settle the house for \$4,000.

Q. Did he say why?

A. He said that I file a homestead.

The Court: What is that answer?

A. I file a homestead.

Mr. Barrett: Homestead.

A. Valued at \$3,000 and so——

Q. (By Mr. Barrett): Had you filed a homestead on your house? A. I did.

(Testimony of Luisa B. Santos.)

Q. And how did you get the value you put on that?

A. From the asset value of the Government.

Q. From the what?

A. From the Government, that is the value of the Government.

Q. The assessed value?

A. The assessed value.

Q. I see. Now this list of the contents that you gave to Mr. Aquino, who prepared it?

A. I did. [9]

Q. How did you prepare it?

A. I list it down, put the price down and where I bought it.

Q. Was it in your handwriting?

A. It was in my handwriting.

Q. Now did you ever prepare another list after that one?

A. I prepared one after, after Mr. Barrett told me he was denied of the copy by the insurance company in which I gave Mr. Aquino.

Q. You prepared another list?

A. I prepared another list.

Q. Do you have that with you?

A. I have that with me.

Q. Now to the best of your knowledge, is that list the same as the one you gave to Mr. Aquino?

A. Yes, sir.

(Document examined by counsel for the defendant.)

(Testimony of Luisa B. Santos.)

Q. (By Mr. Barrett): Mrs. Santos, can you remember what the contents of your house were and your estimated value without looking at any list?

A. I guess I can remember some.

The Court: I didn't get that answer, Mr. Barrett.

Mr. Barrett: What?

The Court: I didn't get that answer.

Read the question and answer.

(Last question and answer read back by the Reporter.)

Q. (By Mr. Barrett): Mrs. Santos, when did you prepare this list that you have in your [10] hand?

A. When I went down to Mr. Barrett's office and told him of my contents and he told me that he was denied of the list from the adjuster.

Mr. Barrett: Your Honor, we would like a ruling now. I think Mr. Crain is going to object and we would like Mrs. Santos to use this writing to refresh her recollection, not to introduce it in evidence.

The Court: Is there any objection, Mr. Crain?

Mr. Crain: I don't understand what counsel is driving at. I have no objection.

The Court: No objection, the witness may use the list to refresh her recollection, there being no better list either on file or present, as far as the file is concerned in this matter, or the records of the insurance company.

(Testimony of Luisa B. Santos.)

Q. (By Mr. Barrett): Mrs. Santos, would you then refer to the list and state to the Court what contents in your house were lost in the fire and your estimated value of them at the time of the loss?

A. In the kitchen I have the refrigerator which cost \$267.50.

Q. Where did you buy it?

A. At the Mareleo.

Q. And how long had you had it at the time of the fire? A. Two and a half years.

Q. And what is your estimate of its value at the time of the fire?

A. One hundred and fifty.

Q. You still owe anything on that refrigerator to anyone? [11] A. Yes, I did.

Q. What else was in the kitchen?

A. The range, G. E. Range, which cost \$285, and at the time of the fire, about \$200.

Q. That your estimate of its value at the time of the fire? A. Yes.

Q. Did you owe anything on that to anyone?

A. I do.

Q. Was there anything else in the kitchen?

A. The dishes and the silverware.

Q. Could you describe it a little?

A. I have some china, Chinese tea sets there, and silverware of all kinds and dishes.

Q. And do you know what their cost was to you and how old they were?

A. I valued them all at \$150.

(Testimony of Luisa B. Santos.)

Q. And in your best estimate, what was their value at the time of the fire? A. About \$125.

Q. What else was there in the kitchen, if anything? A. Reno Ware, \$170.

Q. Just what is Reno Ware, what is it?

A. Set of pots, valued at \$100.

Q. At the time of the fire you valued them at \$100? A. Yes.

Q. I think you said it cost \$170. There anything else in the kitchen?

A. The dining tables. [12]

Q. How old is that?

A. One set is seven months old, it cost us \$72.50, and the other one is five years old.

Q. You had two dining sets? A. Yes, sir.

Q. And what is your estimate of the value of the new set at the time of the fire?

A. I value the other one at \$25 and the new set at \$50.

Q. Now you said "set," just a table or something else with it? A. Table and chairs.

Q. How many chairs?

A. The other one has four chairs and the other one is five chairs.

Q. Anything else in the kitchen that was destroyed, to the best of your knowledge?

A. I have a sink there.

Q. The what? A. The sink.

Q. Well, that is a part of the house.

A. Yes.

Q. How about the living room?

(Testimony of Luisa B. Santos.)

A. The living room I have the rattan set.

Q. How many pieces?

A. Twelve pieces rattan set.

Q. Do you know how old that was?

A. About two and a half years.

Q. Do you know what it cost? [13]

A. Three twenty-nine, ninety-five.

Q. Where did you buy it? A. Ada.

Q. And what was your estimate of its value at the time of the fire? A. About \$250.

Q. Anything else in the living room?

A. I have the nara set. I value it at, bought it at \$155 and I value it at \$100 at the time of the fire.

Q. Now what, what was the nara set, could you describe it a little? A. I beg your pardon?

Q. What could you describe the nara set?

A. It was a coffee table, end tables and chair.

Q. Anything else in the living room?

A. Encyclopedia set, Grolier.

Q. How old was that?

A. It was three years old.

Q. And how much did you pay for that?

A. Two sixty-nine.

Q. What did it consist of?

A. The Encyclopedia, Book of Knowledge, Lands and Its People, and I think I have the complete set of that.

Q. And what was your estimate of its value at the time of the fire? A. Two hundred.

Q. Anything else in the living room?

(Testimony of Luisa B. Santos.)

A. I have the decoration and picture [14] frames.

Q. How many?

A. I have quite a few decorations. I have four of them for the table, I mean seven of them, table vases and those, those that they place on the table just for decoration, and the wall.

Q. And what was your estimate of their value at the time of the fire?

A. I valued them at \$100 and at the time of the fire about \$50.

Q. About \$50 at the time of the fire. Anything else in the living room?

A. That is all that I can remember.

Q. What about the bedrooms?

A. In my bedroom I have three-quarter beds, which I bought for \$125.

Q. How old were they?

A. It is three years.

Q. What is your estimate of its value at the time of the fire?

A. One hundred dollars.

Q. Did it have a mattress?

A. It had an inner spring and the box.

Q. Any other beds?

A. And that is all I have, and the ifil wood table in my room.

Q. What about the other bedroom?

A. The other bedroom I have a double bed.

Q. How old was that?

A. Two and a half years. [15]

Q. When did you buy it, or, rather, where did

(Testimony of Luisa B. Santos.)

you buy it? A. Morroco.

Q. And what is your estimate of its value at the time of the fire? A. About \$200.

Q. Was that bed completely paid for?

A. Not yet, still owe some.

Q. Anything else in the bedrooms?

A. The dresser, chest of drawers.

Q. And what is your estimate of the dresser value at the time of the fire? A. About \$50.

The Court: Mr. Barrett, we will take a short recess at this point. Take the jury out. I must warn the jury before you leave that, do not discuss this case yet among yourselves and do not discuss the case with anyone else until the case is completed and the Court turns the case over to you for decision. You may now take a short recess.

(Whereupon, a short recess was taken at this time.)

The Court: Let the record show the jurors are present in the jury box; counsel for the plaintiff and defendant are in the courtroom.

Continue with your examination of the witness, Mr. Barrett.

Q. (By Mr. Barrett): Mrs. Santos, I think you just mentioned the three-quarter bed and double bed. Were there any other beds in the house?

A. There was one single bed.

Q. And where was that? [16]

A. It was in the, in the hall to the bathroom.

Q. Do you know how old it was?

(Testimony of Luisa B. Santos.)

A. About five years.

Q. And what did it cost you new, or when you got it? A. Twenty-five dollars.

Q. What was your estimate of its value at the time of the fire? A. Ten dollars.

Q. Now in the way of miscellaneous items, what did you have in the house at the time of the fire?

A. We have our clothings, all our linens and jewelries and I have a few cash.

Q. What? A. Money.

Q. Money? A. Uh huh.

Q. What did you have in the way of clothing?

A. I have linens, towel, pillow cases, linens, bed spreads.

Q. Let's take it one item at a time. How many bed sheets and pillow cases did you have, do you know? A. I have about ten sheets.

Q. What about towels?

A. Towels, I have about two dozen.

Q. And shoes? A. Shoes, I have five pair.

Q. What about clothing for yourself and the children?

A. I have about fifteen dresses and does my daughter, has about that much. [17]

Q. How old is your daughter?

A. Thirteen years old.

Q. What about the clothing of the other two children?

A. The baby has quite a few of them. This other girl didn't have much because she just, she was just

(Testimony of Luisa B. Santos.)

sent down by her parents and we were all sick at the time, to help around the place.

Q. How old was the baby?

A. The baby was about seven months old at the time of the fire.

Q. What is your estimate of the value of all these miscellaneous items at the time of the fire?

A. I estimate all of the clothing at \$500.

Q. You refer to your list now and see if there is anything you haven't mentioned that you lost in the fire?

A. I have lost about \$268 in cash.

Q. Where was that? A. In the house.

Q. What part of the house?

A. It was in my wallet.

Q. Where was your wallet at the time of the fire, do you know?

A. It was on top of the dresser.

The Court: That amount \$216?

A. Two sixty-eight.

Q. (By Mr. Barrett): Is there anything else on the list that you haven't mentioned?

A. I guess I mentioned them all.

Mr. Crain: If the Court please. [18]

The Court: Mr. Crain.

Mr. Crain: The cash that she is describing is not included in the items, not included in any of the so-called lists furnished by the or of the various items.

Mr. Barrett: I will stipulate to that.

(Testimony of Luisa B. Santos.)

Mr. Crain: I will stipulate the cash has not been mentioned.

Mr. Barrett: As is the jewelry she has mentioned also.

The Court: Jewelry and cash, those two items to be excluded.

Mr. Crain: They should be stricken, yes, sir.

The Court: Very well.

Q. (By Mr. Barrett): Mrs. Santos——

The Court: As to the value of the jewelry, what was the value of the jewelry?

Q. (By Mr. Barrett): Mrs. Santos, did you discuss the cash and the jewelry with Mr. Aquino when you talked to him?

A. I told him about that and he says that I didn't, that is not included in the policy.

Mr. Crain: If the Court please——

A. Our clothing——

The Court: Wait a minute.

Mr. Crain: I have previously moved to exclude this.

The Court: My question was, Mr. Barrett, what was the amount given by this witness as to the value of the jewelry?

Mr. Crain: She gave none.

The Court: I understood she placed some value on the jewelry. I didn't, I don't have it in my notes. Did this witness give any?

Mr. Barrett: I have no objection to her testifying to what [19] the value was if Mr. Crain has no objection.

(Testimony of Luisa B. Santos.)

Mr. Crain: I think she was including that in this lump sum of \$500.

The Court: Well, the testimony as to the cash of \$268 may be excluded. The jury is instructed not to consider the amount of cash that was lost in this particular fire, or the testimony, rather, to the \$268, as being stipulated by counsel as not being covered under the insurance policy.

Q. (By Mr. Barrett): Now Mrs. Santos, this estimate of \$500 on your miscellaneous items, did that include the jewelry? A. No.

Q. How did you happen to take out a policy of insurance on your house?

A. Mr. Guerrero, the one that is working over there, is after me for the insurance. I decided to insure the contents of the store that I was running down in Agat. I decided to insure my house, too, at the same time since he was after me.

Q. Who is this Mr. Guerrero?

A. I just know him by Leon Guerrero. He was working for the insurance company.

Q. And has he ever, had he ever been at your house before the fire? A. Yes.

Q. Had he been inside it? A. Yes.

Q. What did you do when you decided to take out a policy?

A. I went over to the office and make the payment. The policy was already made. [20]

The Court: Is this material, Mr. Barrett?

Mr. Barrett: I think so, your Honor.

The Court: I don't think there is any question

(Testimony of Luisa B. Santos.)

about a policy of insurance being issued and the date and the amount, the property covered, speaks for itself under your Exhibit No. 1.

Mr. Barrett: I am only going into it because there is an allegation, your Honor, the answer of **misrepresentation in obtaining the policy.**

The Court: Very well.

Q. (By Mr. Barrett): Did you tell Mr. Guerrero how much you wanted to insure your house and contents for?

A. He asked me about the house and then he is the one that told me that he will insure the house for \$8,000 and the contents for \$2,000.

Mr. Barrett: That is all the questions I have now.

The Court: Mr. Crain.

Cross-Examination

By Mr. Crain:

Q. Mrs. Santos, I believe on the 22nd of March of this year you signed a sworn statement in proof of loss concerning this fire, did you?

A. Yes.

Q. Huh? A. Yes.

Q. Did you swear to the contents of that statement, did you? A. I beg your pardon? [21]

Q. Did you swear to the truth of the contents of that statement? A. Yes.

Q. Do you remember before whom you swore to the truth of the contents of that statement?

A. What do you mean?

(Testimony of Luisa B. Santos.)

Q. Do you remember the person?

A. Mr. Aquino.

Q. Mr. Aquino. You have been handed Exhibit No. 2. Do you find your signature on that exhibit?

A. Beg your pardon?

Q. Is your signature on that exhibit?

A. Yes.

Q. Can you tell us now the name of the person before whom you swore to the truth of that statement? A. You mean the notary public?

Q. Uh huh. A. Mr. Joe Lujan.

Q. You know Mr. Lujan? A. Yes.

Q. Did you give him the information that is contained in the body of that statement or did you fill that out yourself? Who filled that out?

A. Beg your pardon?

Q. Who filled it out?

A. It was filled out in Mr. Barrett's office.

Q. Did you see it filled out? A. No. [22]

Q. The information that is contained in there, is that information that you gave to someone?

A. Yes.

Q. Is it correct? A. Yes.

Q. Your whole loss in this fire that you have described this morning was \$17,000, is that right?

A. For the fire investigator was up there and he was asking me: What do I think the value of my building would cost me, I told him "As for myself, it will cost me that price."

Q. How much? A. Seventeen.

(Testimony of Luisa B. Santos.)

Q. Who did you give this information to in order that it be included in this proof of loss?

A. I talked to Mr. Barrett.

Q. So as far as you know, Mr. Barrett was the one who valued your property at \$17,000 upon the information you gave him?

Mr. Barrett: Object to that, your Honor.

The Court: Don't answer.

Mr. Barrett: She has already testified she gave me this information.

The Court: I don't think that is the testimony, Mr. Crain, I don't think that is the testimony.

Mr. Crain: She said she didn't know who filled it out.

The Court: You asked her whether or not Mr. Barrett—

Read the question.

(Last question read back by the Reporter.)

Mr. Crain: I will strike that. [23]

The Court: You wish to withdraw the question?

Mr. Crain: Yes, please.

The Court: The question may be withdrawn; the answer may be withdrawn.

Q. (By Mr. Crain): It is correct, then, that you told Mr. Barrett that you valued your property at \$17,000?

A. Yes.

Q. Now is that the building alone?

A. The building and the things I lost.

Q. Everything you lost, you mean the building and the contents?

A. Yes.

(Testimony of Luisa B. Santos.)

Q. Can you tell us why, in answer to question six, you said the cash value of the property at the time of the loss was \$12,000?

A. That is for the building.

Q. That is for the building alone?

A. Uh huh.

Q. So that you then valued the personal property at \$5,000, is that right?

A. The value of my contents and everything.

Q. At \$5,000. Now was there any change as to the quantity or quality of the items, actually, of the contents of your house from October, when you, as you say, took out this policy, until March 1st when the fire occurred? A. Will you repeat that?

The Court: I don't think the witness understood the question. Rephrase your question, Mr. [24] Crain.

Q. (By Mr. Crain): Did you change any of the contents in your house between October, 1959, and March 1, 1960?

A. I didn't change but I moved in some of my things. I have some other things that I move in.

Q. What were those things that you moved in?

A. Mr. Crain, I can't remember all my things.

Q. Mrs. Santos, you remember that several years ago you paid \$267.50 for a G.E. Refrigerator.

A. Yes.

Q. Now you don't remember items of furniture or personal effects that you may have moved in or out of this house the last six months prior to the fire, is that right? A. (No response.)

(Testimony of Luisa B. Santos.)

The Court: Do you understand the question, Mrs. Santos?

A. I just list what Aquino told me was important for me to list for him as he told me that those are the things that are not in the policy.

Q. (By Mr. Crain): That is not an answer to my question, Mrs. Santos. The question is very simple. What did you move into that house between October, 1959, and March 1, 1960?

A. I have quite a few things that I move in there from the store that I used to run but I quit running the place over there, like this other dining table.

Q. We already have that included.

A. No, it is not that, but as to what Mr. Aquino told me.

Q. We are not worrying about what Mr. Aquino told you, we are asking you a simple question. What did you move into that house between October, 1959, and March 1, 1960? [25]

A. I don't remember.

Q. You moved the dinette set, you told us. Is it the one worth \$50 or the one worth \$25?

A. I don't remember.

Q. You don't remember. You remember moving any items of furniture out of that house between October, 1959, and March 1, 1960? A. No.

Q. You didn't move any? You didn't move a Amana Freezer out of the house?

A. That was moved before I moved up there.

Q. That was moved before you moved up there?

(Testimony of Luisa B. Santos.)

A. Yes.

Q. That was not included in your evaluation of the value of your property at the time you insured it, is that right?

A. It was included on the policy but I didn't include that down because I told the adjuster it wasn't working——

Q. It was——

The Court: Finish your answer.

A. It was moved out before the fire.

Q. (By Mr. Crain): But it was moved out after the insurance policy was written, wasn't it?

A. Yes.

Q. Now is that the only item that was moved out of the house after the insurance policy was written and before the fire? A. That's all.

Q. Did you own that freezer?

A. Yes. [26]

Q. You didn't owe anybody any money on it?

A. No.

Q. What did you do with it?

A. They took it to have it fixed.

Q. Who took it?

A. A guy by the name of Antonio Cruz.

Q. Do you have that freezer now? A. No.

Q. He never brought it back?

A. It is not fixed.

Q. Did you have an automobile at your house at the time of this fire? A. No.

Q. Why?

The Court: Mr. Crain——

(Testimony of Luisa B. Santos.)

Mr. Barrett: Your Honor, why she didn't have any automobile there, I can't see that has any bearing on the issue.

The Court: I think that is going a little far on cross-examination.

Q. (By Mr. Crain): Mrs. Santos, you have testified that you were living with a Mr. Gregorio Sanchez, is that right? A. Yes.

Q. How old are you?

A. Thirty-eight.

Q. How old is Mr. Sanchez?

A. About 27 or 28.

Q. Now how many years have you been living together? A. About three years. [27]

Q. You been living together since before you built this house, isn't that right? A. Yes.

Q. Where does Mr. Sanchez work?

A. Now or before?

Q. Where did he work in October, 1959?

A. Commercial Port.

Q. Where does he work now?

A. Commercial Port.

Q. Where did he work in 1958?

A. Public works.

Q. He has been employed ever since you have been living together, is that right? A. Yes.

Q. Now, Mrs. Santos, does Mr. Sanchez own this house or any part of it? A. No.

Q. Did he own any part of the personal property that was in that house? A. No.

(Testimony of Luisa B. Santos.)

Q. He contributed nothing to the purchase of any of this property at all, is that right?

A. He did bought some but he gave them to me.

Q. He bought it and gave it to you?

A. Yes.

Q. Did he buy any of the materials that went into the house? A. No.

Q. Did he do any of the work in constructing the house? [28] A. Some.

Q. Some. So Mr. Sanchez, what does he do around the house, does he contribute anything to the maintenance of the household?

A. Do I have to answer that?

Q. You brought Mr. Sanchez into this case, I didn't.

The Court: Let's not argue with the witness.

Mr. Crain: I am not arguing.

The Court: You answer the questions and if I feel as though the questions should not be answered, I will rule at that time.

Q. (By Mr. Crain): Please answer the question.

The Court: Read the last question. Read the last two questions.

(Last two questions read back by the Reporter.)

The Court: Do you understand the question, Mrs. Santos?

A. Yes.

Q. (By Mr. Crain): What does he contribute?

(Testimony of Luisa B. Santos.)

A. When he get paid, he give me some of the money and I go out and buy with it.

Q. Has that been true ever since he has been living with you?

A. Beg pardon? No, not all the times.

Q. You mean sometimes he gives you money and sometimes he doesn't? A. Yes.

Q. Did he ever give you money to buy any of this furniture, these fixtures, that you listed here that were destroyed in this house? [29]

A. Yes.

Q. Now, isn't it a fact, Mrs. Santos, that practically everything that you have in that house you have bought on rather long-range installment payments, isn't that true?

A. I don't understand.

Q. The 12-piece rattan set that you said that you purchased two and a half years before the fire, now actually you bought that rattan set in 1956, did you not? A. I think so, I don't remember when.

Q. You don't remember whether it was two and a half years old or four years old, is that right?

A. No, it was two and a half years old.

Q. Didn't you buy it in 1956 from Ada's?

A. Like I said, Mr. Crain, I don't remember the year, but as I estimated it approximate about that time.

Q. You bought it on installments, did you not?

A. Installment.

Q. Now who made the installment payments,

(Testimony of Luisa B. Santos.)

did you make all of them or did Mr. Sanchez make some of them?

A. Mr. Sanchez made some of them.

Q. He made some of them. Did he make half of them? A. That I can't explain.

Q. You can't explain? A. No.

Q. Can you tell us on the average what Mr. Sanchez makes a week or a month?

A. I can't answer, I don't know.

Q. You don't know. Can you tell us how much money, [30] approximately, Mr. Sanchez has given you or contributed to your household per year during the past three years?

A. I don't remember.

Q. You have no idea? A. No.

Q. You testified that you had a G.E. Range that was two and a half years old? A. Yes.

Q. You testified that you paid \$285 for it?

A. Yes.

Q. And that you valued it at the present time at \$200? A. Yes.

Q. And that it was not paid for? A. Yes.

Q. Who do you owe the money to?

A. Marelco.

Q. Is that Marianas Electric & Supply Company? A. Yes.

Q. I believe you testified the refrigerator was two and a half years old? A. Yes.

Q. That you paid \$267.50 for it? A. Yes.

Q. How did you remember that figure so well, Mrs. Santos?

(Testimony of Luisa B. Santos.)

A. I was working for the company at the time.

Q. And you valued that G.E. Refrigerator at \$150 at the present time? A. Yes. [31]

Q. And it is not paid for? A. No.

Q. How much do you owe on each of these items at the present time?

A. I can't explain that because they were all in one contract.

Q. The two items were on one contract?

A. Yes.

Q. Are they still in that one contract?

A. I don't know whether they still have them.

Q. You just testified that you worked for Marianas Electric & Supply Company, how long did you work there? A. Over a year.

Q. Can you tell us why you left their employment?

Mr. Barrett: I think this, your Honor, is outside the scope of the issues. I will object to it.

The Court: What is the purpose of your question, Mr. Crain?

Mr. Crain: I will withdraw the question at this time and come back to it later.

Q. (By Mr. Crain): Had you purchased any furniture from Pacific Furniture Company in Agana, of any kind?

A. Which is Pacific Furniture? No.

Q. You haven't? A. No.

Q. Did you ever purchase a TV set?

A. No.

Q. You never owned a TV set?

(Testimony of Luisa B. Santos.)

A. One from Marianas Electric. [32]

Q. When did you purchase that?

A. I think I have that in '57 or '58.

Q. What happened to it?

A. When I move up to Merizo, we can't use the TV over there so I request them to take it back.

Q. Did you ever own an Admiral Refrigerator?

A. Yes.

Q. Where did you purchase it from?

A. Dumont.

Q. That is the Radio Center over here on Marine Drive? A. Yes.

Q. Did you also purchase a TV set from them?

A. Yes.

Q. Were those in the house in October of 1959?

A. No.

Q. Were they ever in the house after that day?

A. No.

Q. Where were they?

A. They were down in Agat.

Q. In Agat? A. Yes.

Q. You were maintaining two households?

A. My house in Merizo used to be rented and I was living in Agat.

Q. Was your house in Merizo rented to someone else in October, 1959, when you took out this insurance? A. Yes.

Q. You weren't living in it then at all? [33]

A. No.

Q. Did you tell the agent that you had mentioned here that you were not living in the house?

(Testimony of Luisa B. Santos.)

A. Yes.

Q. Who was living in the house in October, 1959? A. A serviceman.

Q. What was his name?

A. Dickson Fields.

Q. Did you ever buy any furniture from a Mr. Engle? A. Yes.

Q. Was any of that furniture ever in this house?

A. Yes.

Q. Was it burned in this fire? A. Yes.

Q. Was it paid for? A. No.

Q. What was its value and what was it?

A. Seventy-two, fifty.

Q. What item was it? A. Dining table.

Q. You mean one of the dinette sets?

A. Yes.

Q. Is that all that you bought from Mr. Engle?

A. Just the dinette set.

Q. Now, actually, you don't remember when you purchased most of this property, do you?

A. Which property?

Q. The 12-piece rattan set, do you know what year you bought [34] it in?

A. It was somewhere around '56 or '57.

Q. Well, it was in 1957, wasn't it?

A. I can't remember.

Q. You valued it, you say you paid \$329.95 for it? A. Yes.

Q. You estimate its value at the time of the fire \$250? A. Yes.

Q. That is a very low depreciation. Can you ex-

(Testimony of Luisa B. Santos.)

plain to us why that set remained so valuable although it was that age?

A. It still looks like new and I have taken care of it. I just value that as to my own knowledge, I don't know.

Q. Now the G. E. Refrigerator, which is not as old as the rattan set, is it? It is newer, isn't that right? A. I think so.

Q. You depreciated it from \$267.50 to \$150. Why such a greater amount of depreciation?

A. Well, I have been in some of these second-hand stores and I have observed how they sell the second-hand.

Q. And that is your only basis for valuing the refrigerator? A. Yes.

Q. Now you mentioned a nara set. Is that a living room set? A. Yes.

Q. Is that newer than the rattan set?

A. It is older than the rattan set.

Q. It is older, how much older? [35]

A. It is six months.

Q. It was purchased in 1955 or 1956, then, is that right? A. Yes.

Q. How old were the bed sheets that you had in the house?

A. I can't say they are too old because every now and then I buy one.

Q. You remember how much you paid for them?

A. I only paid two-some, \$1-some, three-some.

Q. Let's say you paid two-some; you had ten sheets; that would be \$25 new, wouldn't it, if you

(Testimony of Luisa B. Santos.)

paid \$2.50 apiece, right? A. I don't know.

Q. So would you say that your sheets that you had have a maximum value of \$25?

A. When they are new?

Q. Yes. A. About that.

Q. But these were not new, they were of varying age. A. Some new.

Q. All right, how many pairs of pillow cases?

A. About 12.

Q. What would they cost new?

A. About fifty cents apiece—no, \$1-some.

Q. And you had about 12, so we would say about \$15 for them. That is \$40 for the sheets and pillow cases. Now how many bedspreads are we speaking of? A. Five.

Q. How much are, how much were they new?

A. Some is eight-some, five-some and [36] six-some.

Q. What were they worth at the time of the fire, Mrs. Sanchez? None of them were new, were they? A. I have two of them unused.

Q. Two unused? A. Yes.

Q. All right. All right, say they are worth \$15, what are the used ones worth?

A. I don't know.

Q. What was the actual value of the dresses that you had in the premises at the time of the fire?

A. I can't answer that, Mr. Crain, due to the prices of the dresses are different.

Q. The ages were different too, were they not?

(Testimony of Luisa B. Santos.)

Some were older than others? A. Oh, yes.

Q. You didn't have 15 new dresses in the house, did you, Mrs. Santos? A. No.

Q. How many new dresses did you have that hadn't been worn? A. Three.

Q. How much did they cost you?

A. Twelve ninety-five.

Q. Each? A. No, one is \$7.95.

Q. And the third one?

A. The other one is—I can't remember all the prices of them.

Q. Now was the price higher or lower than the two named? [37]

A. Sometimes I paid \$19 for a dress.

Q. I am not talking about—

A. For a dress.

Q. You surely remember the three new dresses you had at the time of the fire that weren't worn. You told us one cost \$12.95 and one cost \$7.95. Can you tell us whether the other was more expensive or less expensive than those two?

A. About \$9.95.

Q. About \$9.95. The other 12 dresses were all used? A. Yes.

Q. Did they mostly, when they were new, fall in this same price range? A. Some cost more.

Q. Did some cost less? A. Some cost less.

Q. And some of them were quite old, were they not, several years old? A. No.

Q. How old was the oldest one?

A. About eight months.

(Testimony of Luisa B. Santos.)

Q. You didn't have any dress in the house over eight months old, is that right?

A. I have some, but those are rags over there which I don't count them for dresses.

Q. They are rags. Now you said your daughter had about 15 dresses also? A. Yes.

Q. How many of them were new? [38]

A. She has five new ones.

Q. Five new ones that had never been worn?

A. Yes.

Q. How long before March 1st did you purchase them? A. I think after the New Years.

Q. Did you buy them all at one time?

A. No, one at a time.

Q. But she never wore them, she had never worn them? A. No.

Q. Can you tell us about what you paid for them? A. I don't remember.

Q. You tell us approximately what you might have paid for them?

A. I think the highest is \$12.95.

Q. Twelve ninety-five, down? A. Yes.

Q. Now she had ten used dresses there, then?

A. Uh huh.

Q. Were some of them fairly old or were they all practically new?

A. They were all practically new.

Q. Did they fall into this same general price range at \$12.95 or less? A. Some less.

Q. Some less. Now you said five pairs of shoes?

A. Yes.

(Testimony of Luisa B. Santos.)

Q. Those were your shoes? A. Yes. [39]

Q. Were they all new? A. No.

Q. Were some of them well used? A. No.

Q. You mean they were all practically new?

A. Yes.

Q. What are the prices of those shoes?

A. Six ninety-five.

Q. That a good average for the shoes? Is that about the average you paid for new shoes?

A. Yes.

Q. You say they were all practically new?

A. Yes.

Q. You have no old shoes?

A. I have some that had not been used.

Q. Now what would you value the other children's clothing at at the time of the fire, the ones that we have not discussed here?

A. I would value the baby's clothes about \$25 to \$30.

Q. And then which other child, what is the other child, what's its age? A. Twelve.

Q. Twelve. It is a boy? A. Girl.

Q. You have a 13-year-old girl and 12-year-old girl?

A. The 13-year is married and the 12, she is mine and she was sent over by the parents.

Q. She has no clothing? [40]

A. She has some.

Q. That did not belong to you, did it?

A. No.

Q. Now I believe you said you had 24 towels,

(Testimony of Luisa B. Santos.)

two dozen towels, isn't that what you told Mr. Barrett? A. Yes.

Q. Were they all new? A. No.

Q. Would you tell us about what they cost when they were new?

A. Some is 99c, some is a dollar some.

Q. Say a dollar average would be pretty fair?

A. About.

Q. But they were all used?

A. No, some is used.

Q. How many were unused? A. Six.

Q. Six new ones, the rest were, had been used for some period of time, had they? A. Yes.

Q. Now what else do you include in this lump sum of clothing, bed sheets, pillow cases, etc., towels and shoes? Have you enumerated everything that you can think of or are there other items you want to tell us about? A. That's all I have.

Q. The itemization you have given me covers everything, is that right?

A. I didn't put in the curtains. [41]

Q. Shall we put the curtains in now. Were they new? A. No.

Q. How much did they cost you?

A. I don't know.

Q. Huh?

A. I don't remember because I bought them by yards and I made them myself.

Q. Well, would you say you had \$10 worth of material or more? A. About that.

Q. About \$10. And that about covers the unitem-

(Testimony of Luisa B. Santos.)

ized property, is that right? A. Yes.

Q. Now you testified that you had these encyclopedias for three years and that you placed a current value on them at \$200, although you paid \$269 for them three years ago. Isn't that a very high value to place on out-of-date encyclopedias?

A. I don't think so because they are still new.

Q. They are still new. Where did you buy the Reno Ware? A. John Ada.

Q. Did you buy that on the installment plan?

A. Yes.

Q. Is it paid for? A. Yes.

Q. That was purchased in Ada's?

A. I don't know, but he is the salesman that is going around.

Q. Shortly before, shortly before this fire, Mrs. Santos, [42] did you make a sworn statement in order to turn your real estate that is in your name in Merizo into a homestead?

A. I beg your pardon?

Q. Did you make a sworn statement sometime in February, 1960, as to the value of your real estate in Merizo? A. Yes.

Q. You did? A. Uh huh.

Q. Can you tell us what you valued the real property at in the sworn statement?

A. The value in the Government of Guam is three—

Q. No, I am asking you what you valued it at in your sworn statement made in February, 1960?

(Testimony of Luisa B. Santos.)

A. I just picked that up from the asset value, \$3000 some.

Q. You made a sworn statement, did you not?

A. Yes.

Q. And you valued the property at \$3210, is that right?

A. Yes.

Mr. Crain: I have no further questions.

The Court: Counsel have any further examination?

(Counsel approached the bench, discussion off the record.)

The Court: This witness has used a list to refresh her recollection as to the items that she alleges she lost in this fire, approximately the age of the items and approximately what she paid for them and the value she placed on them at the time of the fire or the loss. Counsel has stipulated that they have no objection to the introduction of this list showing, it is sort of a total list of items. I realize the jury has made no notes as [43] to these various items and the amounts and the defense does not agree as to the values of the items, but the Court is asking counsel to introduce this list purely as a guide or as assistance to the jury in determining the items which this witness has testified to as to the age, amount, the cost and the value of the items at the time of the loss. Is that satisfactory to counsel?

Mr. Barrett: Yes.

Mr. Crain: Yes.

(Testimony of Luisa B. Santos.)

The Court: Very well, would you hand the bailiff that list, Mrs. Santos?

(So done.)

The Court: It may be introduced by stipulation of counsel and marked Plaintiff's Exhibit No. 3.

(At this time a certain document was marked Plaintiff's Exhibit No. 3, in evidence.)

Mr. Barrett: Just one or two questions, Mrs. Santos.

Redirect Examination

By Mr. Barrett:

Q. Did you own the house in Merizo that we have been talking about, the one that burned?

A. Yes.

Q. Did anyone have any liens against it that you know? A. No.

Q. What happened to the insurance policy that you received? A. It was burned down.

Q. Have you ever seen a copy of the policy since then? A. No.

Mr. Barrett: That's all. [44]

Recross-Examination

By Mr. Crain:

Q. Can you tell us how you were able to make your sworn statement in proof of loss, which is Exhibit 2 here, if you never saw a copy of the policy again? A. Will you repeat?

(Testimony of Luisa B. Santos.)

Q. I think the question is perfectly clear.

The Court: Read the question, Mr. Reporter.

(Last question read back by the Reporter.)

The Court: I don't think the witness understood the question, Mr. Crain.

Q. (By Mr. Crain): Mrs. Santos, you had an opportunity to look at Exhibit 2 here, the proof of loss that was signed by you? A. Yes.

Q. Can you tell the Court how that was filled out if you did not have access to the copy of the policy?

A. Mr. Aquino gave me one to give to Mr. Barrett, but I don't look at the Barrett—the paper. I don't know whether that is the copy, I am not sure whether that is the policy or what. I don't open the paper, it was folded.

Q. Well, at least you are now testifying that Mr. Aquino did cooperate with you to a certain extent. A. Will you repeat?

Q. I say Mr. Aquino did cooperate with you, then, to a certain extent, even though you don't know what he might have done for you.

A. I don't know.

Q. You testified a moment ago there were no liens against [45] the real estate, is that right?

A. Yes.

Q. Are there any now?

Mr. Barrett: I think that is irrelevant.

The Court: I think so, too.

Mr. Crain: I will ask another question.

(Testimony of Luisa B. Santos.)

Q. (By Mr. Crain): Isn't it a fact there was a lien against the real estate even before you filed the homestead?

Mr. Barrett: I think that is also irrelevant.

The Court: Wait just a minute.

Mr. Crain: Mr. Barrett asked the question.

Mr. Barrett: I said at the time of the fire.

The Court: What was your question?

(Last question read back by the Reporter.)

The Court: I will sustain the objection to that question.

Mr. Crain: If the Court please, counsel made an objection. I will strike that and ask a different question.

The Court: All right, you can withdraw the question and reframe your question, Mr. Crain.

Q. (By Mr. Crain): You stated to Mr. Barrett there were no liens against the real estate of any kind at the time of the fire, isn't that right? Is it not correct that there existed, at the time of this fire, a judgment against you in this court in Topsy's Liquor Company v. Luisa B. Santos in the amount of \$3000? A. No.

Q. That is not true? A. No.

Q. That is Case No. 56-56 in this court, there is no such [46] case? A. No.

Q. Isn't it true that there was a judgment in this court at the time of that fire in the case of Marianas Electric & Supply Company v. Luisa B.

(Testimony of Luisa B. Santos.)

Santos in the sum of excess of \$3,000, or thereabouts? A. Yes.

Q. And those existed at the time of that, that existed at the time of the fire, did it not?

Mr. Barrett: Your Honor, I object to these questions unless Mr. Crain can show there was an abstract of judgment.

The Court: I think it is proper cross-examination.

Mr. Barrett: The judgment does not lien against the real property unless there is an abstract.

The Court: I didn't hear.

Mr. Barrett: A judgment isn't a lien against real property unless an abstract has been filed.

The Court: I don't know whether it has or has not. That is a preliminary question. I don't know whether Mr. Crain will attempt to show that and whether or not the testimony will amount to, what it will amount to.

Q. (By Mr. Crain): Isn't it a fact there was a judgment in the Island Court of Guam in the case of Atkins-Kroll against Luisa B. Santos at the time of this fire? A. Yes.

Q. Yes? A. Yes.

Q. And isn't it a fact there was a judgment in the Island [47] Court of Guam in the case of Jones & Guerrero Company v. Luisa B. Santos at the time of this fire? A. Yes.

Mr. Crain: Thank you. I have no other questions.

(Testimony of Luisa B. Santos.)

Mr. Barrett: Would you mark that as an exhibit?

(At this time a certain document was marked Plaintiff's Exhibit No. 4 for identification.)

Re-redirect Examination

By Mr. Barrett:

Q. Mrs. Santos, I am going to hand you a document marked Exhibit B, or Exhibit 4 for the Plaintiff, and ask you if you can identify it? Have you ever seen that document before?

A. I have seen the address but the contents I don't remember.

Q. You pointing at the top? A. Yes.

Q. What did Mr. Aquino give you?

Mr. Crain: I object to this. This is a leading question, highly improper.

The Court: What is the document that you have presented to the witness?

Mr. Barrett: It is a photostatic copy of the insurance binder.

The Court: Insurance binder. Is this rebuttal testimony?

Mr. Barrett: Yes.

The Court: What is the purpose of this testimony?

Mr. Barrett: To determine whether or not this is the document Mr. Aquino gave to her after the fire. [48]

Mr. Crain: She testified very definitely she

(Testimony of Luisa B. Santos.)

didn't receive that; that it was a folded piece of paper and she didn't know what was in it and so I don't know how she could identify this.

The Court: Go ahead, ask your question and see if you can identify it. If you cannot, if it is objected to——

Q. (By Mr. Barrett): Could you answer the question? Can you or can you not identify that paper in your hand?

A. I can identify the National Union Fire Insurance Company.

Q. No, just the top. Well, I will withdraw the question.

The Court: Any further questions of this witness?

Mr. Crain: I have none.

The Court: You may be excused, Mrs. Santos.

Mr. Barrett: The plaintiff rests.

The Court: The plaintiff rests. Mr. Crain.

Mr. Crain: If the Court please, it being this near noon, I would prefer to start the defense after lunch.

The Court: At one. The plaintiff has rested the case at this point and counsel for the defense has suggested that he be given until this afternoon to prepare the opening, or his presentation, and at this time we will go to lunch and I will ask you to report back in the jury box at 1:30. Now during the lunch period, again I must admonish you not to talk this over among yourself or with anyone else. If anyone should talk with you on the outside

(Testimony of Luisa B. Santos.)

about this case or ask you any questions, you make it known the fact that you are sitting on the jury and you are instructed you cannot discuss the case in any way. We will go to lunch now and recess until 1:30. Be back promptly at 1:30, please.

(Whereupon, court was recessed at 11:45 a.m.) [49]

Afternoon Session—1:30 P.M.—Trial Resumed

The Court: Let the record show that all jurors are present in the jury box and counsel for the plaintiff and defendant. Now we will proceed. Mr. Crain, you wish to make your opening remarks?

Mr. Crain: If the Court please, if we could come to the bench, I would like to make a motion without sending the jury out.

The Court: Very well, will counsel approach the bench, please.

(Counsel and Reporter approached the bench where the following transpired out of hearing of the jury:)

Mr. Crain: At this time I would like to move that the complaint on file be dismissed on the ground that it is based upon an alleged sworn proof of loss which is contrary to the terms of the policy being sued upon, both of these items, the proof of loss and the policy having been introduced, identified and marked a part of the evidence of the plaintiff. That is all.

(Back in open court.)

(Testimony of Luisa B. Santos.)

Mr. Crain: Call Mrs. Santos, please, as an adverse witness.

The Clerk: You are advised that you have been previously sworn and are still under oath.

LUISA B. SANTOS

the plaintiff herein, having been previously duly sworn and examined, returned to the stand, was examined and testified as follows:

Cross-Examination

By Mr. Crain: [50]

Q. Now, Mrs. Santos, you testified here this morning that prior to your securing the assistance of an attorney, you were dealing with a Mr. Aquino at Underwriters Adjustment Company, is that right? A. Yes.

Q. I believe you testified that prior to your contacting an attorney, that Mr. Aquino, you say, told you that your \$2000 evaluation of your personal property was perfectly all right with him and that he would accept it, is that right? A. Yes.

Q. And I believe that you also testified that prior to the time that you contacted an attorney, that Mr. Aquino also told you that he would offer you \$4000 for the house, is that right?

A. That's right.

Q. So Mr. Aquino offered you a total of \$6000, is that right? A. That's right.

Q. Now at the time you retained an attorney,

(Testimony of Luisa B. Santos.)

did you tell your attorney that Mr. Aquino had offered you \$6000? A. Yes.

Q. Did you very definitely tell your attorney that Mr. Aquino had offered you \$6000?

A. I tell Mr. Barrett, I don't think he quite understand me because I told him that the building was for \$4000.

Q. You don't think Mr. Barrett understood you?

A. I don't think so.

Q. And you weren't able to make Mr. Barrett understand you at the time you talked to him, then, is that right? [51]

A. The second time I was there, I told him that he was offering \$6000.

Q. When was that?

A. I don't remember the date.

Q. How long after the fire, Mrs. Santos?

A. It was before the first time they set the first trial and it was——

Q. You mean you waited until after Mr. Barrett had filed the suit to finally tell him Mr. Aquino had offered you \$6000? A. No, before that.

Q. Well, when did you first tell your attorney what Mr. Aquino had offered you?

A. I don't remember the date.

Q. But you didn't tell him the first time or you knew he didn't understand you, is that right?

A. I told him but I don't think he quite understand me.

Q. Why don't you think he quite understood you?

(Testimony of Luisa B. Santos.)

A. Because the second time I was there, he told me that it was \$4000 and that is the time I told him it was \$6000, \$4000 for the house.

Q. Well, when were you there the first time, then?

Mr. Barrett: Your Honor, I fail to see the relevancy of this line of questioning, Mr. Crain trying to impeach me or show I didn't understand my client. What is he trying to bring out?

Mr. Crain: If the Court please, if Mr. Barrett wants to testify in the case, it will be much simpler if he wants to identify his own letter and I will ask to have it introduced in evidence and I won't have to ask his client any more questions. [52]

The Court: What you trying to show?

Mr. Crain: I am trying to show this woman said this morning she had informed her attorney she was offered \$6000; the attorney wrote the letter and said nothing but \$4000 had ever been offered.

The Court: What difference does it make?

Mr. Crain: I think it makes a difference as to the representations that these people are making to the jury as to the honesty and the intentions of the parties that they were dealing with.

The Court: Well, we have two questions here. We have a policy of insurance which carries \$8000 on the real property and \$2000 on the personal property. The question has been raised as to the validity of the, or the sufficiency of the proof of loss as filed by the insured. This witness has testified that at the time of the loss the investigator

(Testimony of Luisa B. Santos.)

from some insurance company or some Government or some Governmental official, either a district or, rather, a Village Commissioner, visited the scene and told her to get in touch with the insurance company and to make out the reports. The testimony is that she had some conversation with a Mr. Aquino and gave Mr. Aquino certain information and that she also testified that she went to Mr. Barrett's office, at which time a proof of loss was made out for her signature and it was admitted. Now the question of what she told Mr. Aquino or what she told anyone else as to the value of the real estate, we think that, the oral testimony is going to change that.

Mr. Crain: This is not what she told Mr. Aquino, it is what Mr. Aquino told her.

The Court: What difference does it make what Mr. Aquino [53] told her? She has filed a proof of loss and the proof of loss is what has been introduced in evidence. The meaning of the proof of loss, or, that is something that probably you would like, if you don't understand, would want to go into or the company would have the right to go into it, and had time to go into it, from the date of the filing with the company.

Now the testimony at this point, what this witness, the plaintiff had conversations with her attorney and various and sundry things, I don't see the materiality of it unless you are laying a foundation to impeach this witness.

Mr. Crain: Mr. Barrett said he had no objec-

(Testimony of Luisa B. Santos.)

tion to the introduction of this letter, and with that I will not question this witness any further.

The Court: You presenting that?

Mr. Crain: Yes.

Mr. Barrett: No objection, your Honor.

The Court: Let me see the letter.

Mr. Crain: And I have no further questions then of this witness.

The Court: There being no objection, this letter from W. Scott Barrett to Mr. Johnny Aquino dated March 24, 1960, may be introduced in evidence and marked Defendant's Exhibit A in evidence.

(At this time a certain document was marked Defendant's Exhibit A, in evidence.)

Mr. Crain: I have no other questions of Mrs. Santos.

The Court: Do you have any questions?

Mr. Barrett: No questions. [54]

The Court: You may step down.

Mr. Crain: If the Court please, at this time I would like to call Mr. Gregorio Sanchez, who is in the courtroom.

The Court: Mr. Sanchez, very well.

GREGORIO SANCHEZ

called as a witness here by and upon behalf of the defendant, being first duly sworn, was examined and testified, as follows:

The Clerk: Will you kindly state your name?

Mr. Sanchez: My name is Gregorio Sanchez.

Mr. Crain: If the Court please, I am calling this witness under Section 2055.

The Court: 2055?

Mr. Crain: 2035—2055, two-zero-five-five, of the Code of—

The Court: The Penal Code of Guam.

Mr. Crain: The Code of Civil Procedure.

Cross-Examination

By Mr. Crain:

Q. Will you state your full name, please.

A. My name is Gregorio Sanchez.

Q. Where do you live?

A. I live, at present, in Agat.

Q. Where in Agat?

A. At the old Agat Village.

Q. You know what lot you live on?

A. There is no lot down at that place, they are not divided by lot. [55]

Q. Who do you live with?

A. Pardon me, sir?

Q. Who do you live with?

A. I live with my nephew and the girl, Mrs. Santos.

Q. Where were you living on March 1st, 1960?

(Testimony of Gregorio Sanchez.)

A. I was living in Umatac, I mean Merizo.

Q. Who with? A. Pardon me?

Q. Who with, or with whom?

A. With Luisa B. Santos.

Q. How long had you lived with Luisa B. Santos?

A. Up to now, for almost three years.

Q. Where do you work?

A. I work at the Department of the Commercial, I mean the Commercial Port of Guam.

Q. What do you do?

A. I was a cargo checker.

Q. You are a cargo checker? A. Yes, sir.

Q. How much do you make?

A. That I cannot tell you the exact amount.

Q. How much do you make per hour, Mr. Santos? A. One dollar, fifteen an hour.

Q. How many hours do you average a month?

A. Well, we only work when there is a ship arrive.

Q. Mr. Sanchez, how long have you been working as a cargo checker?

A. The late part of '59. [56]

Q. Almost a year? A. That's right.

Q. Are you able by now to average what you will make a month in your employment?

A. As I said, sometimes we work eight hours per months, sometimes we work 30 hours in, what I mean, in one month. It is only when the ship arrives. Sometimes the check will amount up to \$80, sometimes \$30 and sometimes \$4.

(Testimony of Gregorio Sanchez.)

Q. Are you speaking of a month now?

A. Pardon me?

Q. Are you speaking of a month or a week when you get your check?

A. A pay check, which is every two weeks.

Q. It can run from \$4 a week to \$80 a week, is that what you said?

The Court: No, he gets paid twice a month, every pay check.

Q. (By Mr. Crain): It could run from \$4 a pay period, then, to \$80 a pay period, then, is that right?

A. That's right.

Q. That your take-home pay, is that right?

A. That's right.

Q. Now you have deductions made as a single man, is that right?

A. No.

Q. As a married man?

A. Will you please repeat that?

Q. How many dependents do you take from your——

A. Four. [57]

Q. Who are they?

A. Those are my children.

Q. By a previous marriage?

A. By a previous marriage, that's right.

Q. No children of Mrs. Santos?

A. No.

Q. And the \$4 to \$80 that you are speaking of is your take-home pay after the deductions are made, is that right?

A. There is no deductions on those checks, as I said.

Q. No deduction?

A. That's right.

(Testimony of Gregorio Sanchez.)

Q. Do you contribute to the support of these four children that you are mentioning here?

A. Yes.

Q. How much?

A. If I have some, I was ordered to pay \$40 every pay day, but I only give what I got.

Q. How much do you contribute toward the household expenses in the house you live in?

A. Will you repeat that question, please?

The Court: Repeat the question, Mr. Barnes.

(Last question read back by the Reporter.)

The Court: You understand the question? You are now living in Agat. How much do you contribute to the support of that house where you are now living?

A. I would say about 50 per cent.

Q. (By Mr. Crain): Fifty per cent of what?

A. Of what I am getting. [58]

Q. Of your gross pay? A. That's right.

Q. Was that true on March 1st, 1960?

A. Pardon me?

Q. Was that same situation true on March 1st, 1960, were you contributing about 50 per cent of your pay?

A. Yes.

Q. Was it also true in October of 1959?

A. Yes.

Q. And it was true for a couple of years before that on the other jobs you had, wasn't it?

A. Yes.

Q. Now you heard Mrs. Santos testify here of purchasing furniture, appliances, encyclopedias, cooking ware, and so forth. I think you heard her

(Testimony of Gregorio Sanchez.)

testify that practically all of that merchandise she had bought on the installment plan, isn't that right?

A. Yes.

Q. And she bought that with your knowledge, isn't that right? A. Not all the time.

Q. You mean sometimes she bought it without your knowing about it? A. Yes, that's right.

Q. When it came in the house, you knew it was there, didn't you? A. That's right.

Q. And you made payments, you made some of the payments on all these items, didn't you? [59]

A. That's right.

Q. From your earnings?

A. Mr. Crain, I was working and sometimes I was rais—

Q. Sometimes you were working.

A. I was working and sometimes I was farming, I was raising poultry and pigs and that is where I get my income.

Q. You had additional cash income from your farming, is that right? A. That's right.

Q. And from that you also made payments on these furnitures, appliances, so forth, is that right?

A. Sometimes.

Q. In fact, you had most of the cash income in that household, didn't you, Mr. Sanchez?

A. No, I can't say that since most of those furnitures were bought before I even know Miss Santos.

Q. Oh, is that right? A. That's right.

Q. They were bought over three years ago?

(Testimony of Gregorio Sanchez.)

A. Pardon me?

Q. They were bought over three years ago, then?

A. I can't answer that question when she bought them.

Q. You testified a little earlier you had lived with her for three years, is that correct?

A. Yes, I live with her for almost three years, that is what I said.

Q. All right, now how long did you know her before you started to live with her? [60]

A. Well, a long time ago I used to know them.

Q. But you say she bought all these things before you started to live with her, is that right?

A. Not all of them, some of them.

Q. Can you tell us which?

A. Like the double beds.

Q. You say "double beds," how many double beds are there?

A. Double bed, I'm sorry if I make it wrong.

Q. You say that was bought before you knew her, is that right?

A. I know her ever since I was living in Umatac.

Q. Well, let me rephrase that, then. She bought the double bed before you went to live with her, is that what you mean to say? A. That's right.

Q. All right, what else?

A. Like the refrigerator.

Q. Which, the General Electric Refrigerator?

A. Yes.

Q. Now that was bought before you went to live

(Testimony of Gregorio Sanchez.)

with her, is that right? A. Right.

Q. What about the Admiral Refrigerator, was that bought after you went to live with her?

A. That is after.

Q. That is after. Now on some of these conditional sales contracts, these purchases of furniture and other items, you cosigned the papers on those, did you not? A. No, I don't. [61]

Q. You never cosigned any of them?

A. Nope.

Q. None at all?

A. None that I can remember.

Q. Well, now, it has only been three years, Mr. Sanchez, can you give us a definite answer: Did you ever cosign any paper with her on any property at all? A. None that I can remember.

Q. No automobiles, no refrigerators, no TV sets, nothing? A. Right.

Q. Nothing at all? A. Right.

Q. You never signed your name on a piece of paper with Miss Santos? A. Right.

Q. Is that right? A. Right.

Q. But you have contributed to the payments on much of this property that was destroyed in this fire, isn't that correct?

A. In some of the property, yes.

Q. Now who built that house?

A. Pardon me?

Q. Who built the house that burned down?

A. Who built?

Q. Uh huh.

(Testimony of Gregorio Sanchez.)

A. A carpenter by the name of Vicente—Jose Tapasna.

Q. He the only person that worked on that house?

A. I worked and some free labor, free [62] hands.

Q. Where did the material come from?

A. It came from various stores in Agana.

Q. Was it all new material?

A. Approximately all new.

Q. All new roofing? A. Right.

Q. Roofing iron, everything all new. It came from various stores in Agana? A. Right.

Q. Did you buy any of it?

A. Pardon me?

Q. Did you buy any of it? A. Some.

Q. Can you tell us what you bought and where you bought it?

Mr. Barrett: Your Honor, this has gone on for a long time and I fail to see the relevancy of what Mr. Crain is driving at, what went into the house, where the materials came from. The house, it has been testified, belonged to Mrs. Santos. If he can prove it doesn't belong to her, that is something else.

Mr. Crain: I think we are entitled to inquire into it. I am not sure who any of this property belongs to at the moment.

The Court: You lay your foundation. Do you know that she did not, the insured did not own the real property?

(Testimony of Gregorio Sanchez.)

Mr. Crain: Perhaps she didn't own the sole interest in it and especially the personal property.

The Court: I am going to limit your questions of this witness, if you intend to lay a foundation that someone else owns the personal property other than the witness. As far as the real [63] property is concerned, that speaks for itself, is a matter of record and the proof of loss and policy, the real property, itself. If it can be shown you are putting this witness on the stand to bring out the ownership of the personal property, that the personal property, this was not owned by the insured, it is owned by someone else, let's get right down to the point.

Q. (By Mr. Crain): Mr. Sanchez, there is a 12-piece rattan set that was in this house. How much money did you contribute toward the purchase of that set?

A. That rattan set, that is I bought that myself.

Q. You bought it yourself?

A. Yes, the rattan set belongs to me only when I bought it, but when it put in the house, it no longer belongs to me, it belong to the owner of the house, Mrs. Luisa Santos.

Q. Once she sat down on it, it didn't belong to you any more? A. When it enters the house.

Q. When it enters the house? A. Right.

Q. We have three table lamps here, did you buy them? A. No, I don't buy them.

Q. Pay anything on them?

(Testimony of Gregorio Sanchez.)

A. I don't remember.

Q. You don't remember. How about the G. E. Refrigerator, did you ever make any payments on it?

A. Nope.

Q. Did you ever make any payment on the G. E. Range?

A. Nope. [64]

Q. A dinette set, one year old, did you make any payment on that?

A. No.

Q. You know where it was purchased?

A. Yes.

Q. Where?

A. The dinette set is the one that cost \$72, was purchased at the Island Furniture Market in Anigua.

Q. Is that the one not paid for?

A. Yes.

Q. But you didn't pay anything on it at all?

A. No, I don't. At that time Miss Santos was operating the store in Agat.

Q. We have a three-quarter size bed here, do you or did you have anything to do with the purchase of that?

A. Nope.

Q. Do you know who did?

A. Miss Luisa Santos.

Q. When did she buy it and do you know where she bought it?

A. No, I don't know that. That is another item before I live with her.

Q. And you say the double bed was bought before you went with her, is that right?

A. The double bed and the three-quarter bed.

Q. What about this nara living room set?

(Testimony of Gregorio Sanchez.)

A. That was bought before I live with her, too.

Q. Ceramics and picture frames and so forth, did you buy [65] any of them?

A. No, I never did.

Q. You never did. Did she have any of them before you went to live with her?

A. Some, and some were bought when we were together.

Q. But you never bought any of them or paid for any of them?

A. It is the custom the girl always buys that kind of things for the house.

Q. The dishes and silver ware, you buy any of them at all?

A. No, I don't, it was there before I, was bought before I lived with her.

Q. Before you lived with her?

A. That's right.

Q. And she says she has only had it two years, then she is wrong, is that right?

A. Pardon me?

Q. When she says she has only had them two years, then she is incorrect in her statement, is that correct?

A. Some silver wares she had them for that long, but there is some silver ware she had it before we even live together.

Q. And the dishes the same way?

A. Some of them.

Q. So she says they are all only two years old, she is wrong, is that right?

A. No, she is right, for some silver wares there.

(Testimony of Gregorio Sanchez.)

Q. If she says all of them are only two years old, is that right? [66]

Mr. Barrett: Object to that, your Honor.

The Court: I think you have gone far enough in that, Mr. Crain. The testimony, as I recall Mrs. Santos' testimony, to the best of her recollection they were bought two and a half, three, four years ago.

Mr. Crain: If the Court please, Exhibit 3 is that list which lists the ages of these things, too.

The Court: She did them by years, approximate years. They varied from one year to five years, as I recall it, maybe four years, two years, three and a half years. So far as this witness' testimony of the furniture, the furniture that was in the house, the item of the 12-piece rattan set was bought by him and his testimony was that when he went in the house, from the time he went in, it was hers and I gather from that, and I probably intend to question on that further, later, that he gave that to her as a gift and it was in the house at the time the policy was issued. He said he has been living with her approximately three years, as I recall his testimony. When he went in to live with her, about three years ago, he bought, he brought with him this 12-piece rattan set that he bought, apparently paid for it or was continuing payment, I don't know exactly which, but he made a bequest with her. His testimony was, When it went into the house it didn't belong to me. That is his exact language on the stand.

(Testimony of Gregorio Sanchez.)

Q. (By Mr. Crain): Can you tell us the date you went to live with Mrs. Santos?

A. I can't recall the date.

The Court: Mr. Crain, maybe I can assist. If you took that Exhibit No. 3 and showed it to this witness and ask him if he can [67] identify any items on that list that he bought and paid for himself.

Mr. Crain: I have gone through everything except the encyclopedias, your Honor, it is a little late.

The Court: All right, let's get to the encyclopedias.

Mr. Crain: I would like for him to answer the question I have asked.

The Court: Very well. Do you know the question?

Q. (By Mr. Crain): When did you go to live with Mrs. Santos?

A. I don't know the exact date.

Q. Do you know the year and the month, approximately?

A. The early part of '58 or late part of '59, that I can't remember.

Q. Did you buy this 12-piece rattan set after you went to live with her? A. Yes.

Q. Did you buy that in 1956 from Ada's Store?

A. I, yes, I bought that from Ada's Store.

Q. Did you hear her testify this morning?

A. Not all of it.

(Testimony of Gregorio Sanchez.)

Q. Did you hear her say she bought the rattan set?
A. Yes.

Q. But that is not true, you bought it, is that right?
A. I bought the rattan set myself.

Q. And you made all the payments on it?

A. That's right.

Q. Where was Mrs. Santos working on March 1st, 1960?
A. March 1st, 1960?

Q. Uh huh. [68]

A. She is not working at that time.

Q. She is not working at that time?

A. Yes.

Q. How long has it been since she worked?

A. Since we got off from the store that we were operating in Agat.

Q. You and she were operating the store together in Agat, is that right?

A. I was helping her but she has the store in her name.

Q. In her name?
A. Right.

Q. But it is your store and her store, really.

A. No, it is her store, her name.

Q. What were you doing there?

A. I can be of help.

Mr. Barrett: Your Honor, I am going to object again. I can't see the relevancy of this line of questioning.

The Court: What is the relevancy of this again?

Mr. Crain: These people aren't telling the truth.

I will withdraw the question and ask one other question.

(Testimony of Gregorio Sanchez.)

The Court: Very well.

Q. (By Mr. Crain): Up to this date, you have never cosigned any purchase document with Mrs. Santos, is that right?

A. I have never cosigned, right.

Q. You have never cosigned to purchase an automobile at Crown Motors with Mrs. Santos?

A. Will you repeat that question, please?

Q. Have you ever gone on her note or gone in with her to [69] buy a car from Crown Motors?

A. I bought a car at Crown Motors myself, without her.

Q. Did she cosign the paper?

A. No, she didn't.

Q. When was that?

A. About four months ago, three or four months ago.

Q. And she didn't sign it? A. No.

Mr. Crain: I have no further questions.

Examination by the Court

Q. Mr. Sanchez, did you buy or pay for any other items that were in the house outside of what you testified to, the rattan set? Were there any other items that you bought and paid for in the house at the time of the fire?

A. I can only recall the rattan set.

Q. That is all you bought and paid for?

A. Yes.

Q. Very well. And how much did you pay for that? A. Three hundred and some dollars.

(Testimony of Gregorio Sanchez.)

Q. And when did you buy it?

A. I cannot recall this.

Q. And where did you buy it?

A. At Ada's Store. I was the salesman at the time I bought it.

Q. And did you pay for it by cash or were you paying for it on installments?

A. I paid for it on installments. However, I finish it in [70] a short time because I got the money from my commission.

Q. In other words, the store deducted these payments from your commission on other sales?

A. That's right.

Q. Do you remember when it was fully paid for?

A. It was full, paid full in about three months.

I work for Ada as a part-time salesman.

Q. What year was that? A. Pardon?

Q. What year? A. Around '58.

Q. And were you living in the house with Mrs. Santos at the time that this furniture was bought?

A. Yes.

Mr. Crain: If it please the Court, I would like to ask one more question before counsel proceeds.

The Court: Very well.

Cross-Examination

(Continued)

By Mr. Crain:

Q. Were you present when Mrs. Santos purchased the insurance on this house in Umatac?

A. Pardon me?

Q. Were you present when Mrs. Santos pur-

(Testimony of Gregorio Sanchez.)

chased this insurance on the house in Umatac?

A. No, at Merizo you mean.

Q. Merizo, I'm sorry.

A. No, I was not present. [71]

Q. Were you ever present at any time when she talked to Ben Guerrero, the insurance agent who sold her this insurance?

A. No, when we reach the office she usually go in by herself and I stayed in the car.

Q. Mr. Guerrero never saw you?

A. He might have seen me, but we——

Q. You never went into his office and you never went with her at any time when she was negotiating for this insurance?

A. Sometimes we, sometimes I went in that office but not in connection with the insurance policy.

Mr. Crain: Thank you.

Direct Examination

By Mr. Barrett:

Q. Mr. Sanchez, I have handed you Exhibit No. 4, which is the list of the contents Mrs. Santos testified to. Did you, at the time of the fire, own anything on that list, personally?

A. I didn't own anything here since it is in the house already.

Q. It did not belong to you?

A. As far as I am concerned, right.

Mr. Barrett: That's all the questions I have.

Mr. Crain: I have one other question.

(Testimony of Gregorio Sanchez.)

Recross-Examination

By Mr. Crain:

Q. You didn't own a towel, huh?

A. Pardon me? [72]

Q. You didn't own a towel? A. Towel?

Q. Uh huh. A. I don't.

Q. You don't? A. Right.

Mr. Crain: Thank you.

The Court: Finished with this witness?

Mr. Crain: Yes.

The Court: You need him any further?

Mr. Crain: No, your Honor.

The Court: You may be excused.

Mr. Crain: The defense has no further witnesses.

The Court: Mr. Barrett, you have any further testimony?

Mr. Barrett: No rebuttal, your Honor.

The Court: Both sides rest?

Mr. Crain: Yes.

The Court: We will take a—You wish to take a recess before you argue to the jury or you wish to do it now?

Mr. Barrett: I would appreciate a recess.

The Court: Very well, we will take a short recess at this time and, again, I admonish you not to discuss the case yet. When we return from the recess, the attorneys will argue to you and the Court will instruct you and the case will be turned over

to you for a decision. We will take a ten-minute recess.

(Whereupon, a short recess was taken at this time.)

The Court: Let the record show all jurors are present in the jury box, plaintiff and defendant are—counsel for plaintiff [73] and defendant are present in court.

Mr. Barrett, you may proceed with your argument.

Mr. Barrett: Your Honor, members of the jury, I think you will all agree that the issue in this case is not the personal life of the plaintiff. We all do things that aren't approved by everyone. The issue is whether or not she received the policy of insurance which covered her residence and contents against fire. And if so, what the value was.

Now the Judge will instruct you that this policy, which is an exhibit which you can look at, was what is known as a valued policy for the amount of the real property. The face value on the real property is a liquidated and conclusive amount. There is an endorsement attached to the policy which provides, "It is hereby declared and agreed that with respect to the insurance of a building or buildings the within mentioned policy shall be considered a Valued Policy in accordance with the terms of Section 43356 of the Government Code of Guam and the amount for which a premium is charged shall be subject to the provisions of Section 43408 of the Government Code of Guam." So the only real issue is the value of the contents.

I might just call your attention to the section which I believe the Court will instruct you on, "Policies are either open or valued." Section 33456 says an open policy shall not be written on real property. And then the other section that is referred to: "Total loss by fire or miscellaneous insurance: Recovery of full amount. A fire or miscellaneous insurance policy, in case of a total loss of any risk insured under the classes specified in this title as fire or miscellaneous insurance, shall be held and [74] considered to be a liquidated demand against the insurer taking such risk for the full amount stated in such policy, or the full amount upon which the insurer charges, collects or receives a premium; provided the provisions of this article shall not apply to personal property." Applies only to real property. So you will have to determine how much the personal property was worth, what the contents were worth, so on.

Now Mrs. Santos testified she didn't go to the company to get a policy except under the urging of Mr. Guerrero, who has not testified, and that he was the one who suggested the limit, \$8000 for the house and \$2000 for the contents; that he had been in her house. Certainly there is no misrepresentation of any kind there. I presume that is why we are here contesting this case, because the plaintiff is supposed to have misrepresented in getting this policy in some material respect. But I haven't heard any evidence of it and I don't know that you have.

As to the contents of the house, we have in evidence Exhibit 4, which is the handwritten list Mrs.

Santos testified from. You can look at it, determine whether or not she lost items worth \$2000. That is what she was insured for under the policy. If not, it is your prerogative to cut it down on the contents. But I want to ask you whether or not, if your house burned down tonight, you had to present a claim to your insurance company, you could give them an exact itemization of every item in the house, how much it cost, where you bought it and how much it was worth at the time of the fire. I suggest very few of us could do that. Mrs. Santos has not been exact, but I think that is understandable. But you can look at her list and determine for yourself what the value was. [75]

I know you will listen to the Court's instructions, which are very important, and that if you listen to them carefully you will decide the facts according to the evidence and you will bring in a verdict for the plaintiff for \$10,000, which is the limit of the policy. Thank you.

The Court: Mr. Crain.

Mr. Crain: May it please the Court.

The Court: Mr. Crain.

Mr. Crain: Ladies and gentlemen of the jury, I will not argue at this time about the value of the policy. It is a fact the policy was written on the house for the sum of \$8000—

The Court: Excuse me, Mr. Crain. Bailiff, will you close that courtroom door, please.

Excuse me, Mr. Crain, I'm sorry.

Mr. Crain: It is perfectly correct that a policy of insurance was sold to Mrs. Santos and the con-

tents of that will be before you in the jury room. I am not so sure about how the valuation was arrived at, as to the value of the property, and in view of the fact that you will also have before you a proof of loss partially filled out, signed and sworn to by Mrs. Santos, in which she indicates that her personal property, by her testimony, had a value of \$5000, that property destroyed in the house on the morning of March 1st, 1960, and that the house itself was worth \$12,000. You have here testimony also that she swore, approximately 13 days before this fire, in a document filed with the Department of Records and Accounts of the Government of Guam, that this house was worth \$3210. So if we have these discrepancies, I feel that you, ladies and gentlemen of the jury, have the right to look closely into the [76] matter of the value for this personal property. Now the list that you will have before you as Exhibit 4 was made out by Mrs. Santos herself. She shows an acquisition cost of certain items, such as towels and bed sheets, of \$1000 and estimated value at the time of the fire of \$500. From the details that she was able to give us this morning, it would appear that the new value of all of those items, as she went into detail concerning, would not exceed \$500 and that the used value would be whatever value you would place on used sheets, towels, pillow cases, used dresses and used shoes, taking also into consideration the item that she has testified as still being new, taking all of those items that were new, they would not amount to over \$150 total. I think that the jury will be entitled to use its

own thinking, in reaching a determination, of the value of the listed property at the time the fire took place. From the testimony that you heard, some of it obviously was somewhat older than is shown by Mrs. Santos on Exhibit 4. The defense feels, and has felt all along, even at the time of the fire, that some of the values placed by Mrs. Santos upon these items were entirely too high and that a more reasonable value could be attached to them. I think that the jury, in evaluating this case, is also entitled to examine the insurance policy to determine what Mrs. Santos' obligations are and were to the company, as well as those of the company to her. Thank you.

The Court: Mr. Barrett.

Mr. Barrett: Mr. Crain commented the defense feels the values were too high and have felt that way all along. The Judge will instruct you that the opinion of counsel is not supported by evidence, is not evidence to be supported or considered by the jury. [77] Now there is no evidence that the defense, the defendant felt that the personal property was too high. In fact, the only evidence in there about the attitude of the defendant is the statement of Mrs. Santos herself who said when she talked to Mr. Aquino he told her he had no argument at all about the personal property but he thought the house was too high, he could only pay her \$4000 upon the house. This was the mistake of Mr. Aquino because under a valued policy, if she, if they insure a house for \$8000, they must pay what they insure it for if there is a total loss.

Mr. Crain: I believe this is improper argument.

The Court: I think it is improper. You are encroaching upon the jurisdiction of the Court at this time.

Mr. Crain: Your argument is close——

The Court: The Court will give the law.

Mr. Barrett: I understand that. I am just pointing out the total loss.

The Court: What is it?

Mr. Barrett: Pointing out to the jury there was a total loss.

The Court: You may point out to the jury whether or not there was testimony.

Mr. Barrett: Don't take my word for it, the Court is entirely right; you should listen to the Court's instructions; but there was a total loss, the evidence says there was. There is no contrary evidence and the policy in evidence, you can look at that and see it is a valued policy and the amount written upon the house should be \$8000. Listen to the Court's, very carefully to the Court's instructions what you should do in that report. [78]

As to the proof of loss, which is in evidence as an exhibit, I fail to see how the fact that she thought her entire loss was \$17,000, being \$12,000 on the house and \$5,000 on the personal property, should have any relation to the amount of the policy. If she thought it was worth more than \$8000, then she was underinsured and the company shouldn't complain.

I hope you will listen to the Court's instructions

as to the terms of the policy and the law, as the Court reads it to you. Thank you very much.

Instructions to Jury

The Court: Now members of the jury, now that you have heard the arguments of counsel, the time has come to instruct you as to the law governing this case. Although you, as jurors, are the sole judges of the facts, you are duty bound to follow the law as stated in the instructions of the Court and to apply the law so given to the facts as you find them from the evidence before you. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law, regardless of any opinion you may have as to what the law ought to be. It would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court. The instructions now being given to you are the law of this case and must govern you in your deliberations.

It is the right and the duty of the jury to determine all questions of fact. You must determine the facts from the evidence. The law of this case, as contained in these instructions, must be applied by you to the facts as you find them from the evidence.

Neither by these instructions nor by any ruling or remarks [79] made by the Court during the course of the trial did or does the Court mean to

give any opinion on questions of fact. These instructions are to be considered by you as one connected series. As I said previously, you must not pick out any one individual instruction and disregard the others, but you must take all the instructions together as the law.

If counsel for any party, in the course of his argument, makes any statement which is not based upon the evidence, you must disregard that statement.

You are instructed that since the policy of insurance involved in this case is a valued policy, there is no burden upon the plaintiff to establish the value of the residence at the time of the fire. It has been stipulated there was the fire which totally destroyed the plaintiff's residence and if you therefore find that the plaintiff is entitled to recover on the policy, you are instructed to award the plaintiff \$8000 for the loss of the real property, plus such other sums which you may reasonably compensate the plaintiff for the loss of personal property in the residence, which shall not exceed \$2000.

Under our Public Law 102 of the Fourth Guam Legislature, 1958, First Special Session, Section 43356, it states there are two types of policies, open and valued. One is an “* * * open policy which is one wherein the value of the subject matter is not agreed upon but is left to be ascertained in case of loss. An open policy shall not be written on real property for fire insurance or miscellaneous insurance.” And “(b),” and what we are interested in in

this case, "A valued policy which is one containing on its face an expressed agreement that the thing insured [80] shall be valued at a specified sum."

Section 43408: "Total loss by fire or miscellaneous insurance: Recovery of full amount. A fire or miscellaneous insurance policy, in case of a total loss of any risk insured under the classes specified in this title as fire or miscellaneous insurance, shall be held and considered to be a liquidated demand against the insured taking such risk for the full amount stated in such policy, or the full amount upon which the insurer charges, collects or receives a premium; provided the provisions of this article shall not apply to personal property."

Now in this case a policy of insurance was issued by the defendant on the 8th day of March—Rather, strike that. Was issued to the defendant on the 8th day of October, 1959, and under endorsement number one it states, in part, that \$8000 of this amount of \$10,000 shall be on the real property and \$2000 on the contents. So you understand it, this policy contains an endorsement which covers both the real property and the personal property and, as I said, \$8000 on the real property and \$2000 on the personal property.

There has been testimony, and it has been so stipulated by counsel, that there is a total loss, and as a total loss, then the amount under the real property clause of endorsement one will be a liquidated demand from the insurance company for that amount.

The testimony of one witness worthy of belief is

sufficient to the proof of any fact and would justify a finding in accordance with such testimony, even if a number of witnesses testified to the contrary, if, from the whole case, considering the credibility of the witnesses, and after weighing the various factors of [81] evidence, you should believe that a balance of probability exists pointing to the accuracy and the honesty of one witness.

Now the question for you to decide in this case is the value of the personal property at the time of the fire. Mrs. Santos testified that she had in her home a number of household items, which she testified as to the time approximately when she bought them and what she paid for them and her opinion as to what the value of these items were at the time of the fire. You must remember that the value of the items at the time of the fire, or which you, as jurors, consider from the testimony to be the value, that is the amount that Mrs. Santos is claiming and you should return a verdict for that amount, if you believe from the testimony that the personal property had been totally destroyed. So it is the value of the personal property at the time of the fire, that amount you will determine.

Now, ladies and gentlemen of the jury, if you can conscientiously do so, you are expected to agree upon a verdict in this case. The matter that has been considered—presented to you for your consideration is a serious one, as are all cases that are submitted to juries. You should bring to your consideration of this case your earnest and honest en-

deavor to solve it justly and properly, with due regard to the plaintiff and the defense.

Let me say to you you should freely consult with one another in the jury room. If any one of you should be convinced your view of the case is erroneous, do not be stubborn and do not hesitate to abandon your own view under the circumstances. On the other hand, if, after a full exchange of ideas, you still believe you are right, do not surrender your honest conviction as to the weight [82] or effect of the evidence solely because of the opinion of your fellow jurors or for the purpose of returning a verdict.

The Court finally cautions you that if it becomes necessary for the jury to communicate with the Court respecting any matters connected with the trial of the case, you should not indicate to the court in any manner how the jury stands numerically or otherwise on the issues submitted. This caution the jury should observe at all times after the case is submitted to it and until the jury has reached a verdict.

When all of you agree to a verdict, it is the verdict of the jury. In other words, your verdict must be unanimous. When you retire to the jury room to deliberate, you will select one of your number as foreman or forelady and he or she will sign your verdict for you when it has been agreed upon and he or she will represent you as your spokesman in the further conduct of this case in the court.

It is proper to add the caution that nothing said in these instructions, nothing in any form of verdict

prepared for your convenience, is to suggest or to convey in any way or manner any intimation as to what verdict I think you should find. What the verdict shall be is the sole and exclusive duty and responsibility of the jurors.

Will counsel approach the bench, please.

(Counsel and Reporter approached the bench, where the following transpired out of hearing of the jury:)

The Court: Either counsel wish to note any exception to the charge of instructions given by the Court?

Mr. Crain: No, your Honor. [83]

Mr. Barrett: No, I have no exceptions.

The Court: Let the record show that both counsel have no objections and agree to the instructions as the Court has given.

(Back in open court.)

The Court: Now ladies and gentlemen of the jury, the Clerk has prepared a form of verdict which is for your convenience in figuring out, so you won't have to prepare one for yourself. The form of verdict does not indicate to you how you should decide the case. It is merely made out, or, rather, strike that. It is made out as follows: "We, the jury, find in favor of the plaintiff, Luisa B. Santos, and against the defendant, National Union Fire Insurance Company, a corporation, in the sum of 'blank' dollars for real property, and 'blank'

dollars for personal property," then the total amount. As I previously instructed you, you will return the verdict for the real property for \$8000 and then you will determine, in addition to that, what amount the plaintiff should recover, if anything, for the amount of the personal property which she lost as a result of this fire.

The instructions of the Court are now completed and will the Clerk swear in the Bailiff and the Policewoman.

(So done. Jury escorted from the courtroom.)

The Court: I will ask counsel to remain here in the building within reasonable distance and if you wish to leave the building, make known where you will be so that the Clerk will be able to reach you when, so you can return back to the courtroom within five minutes.

(Jury returned to the courtroom.)

The Court: Let the record show that all members of the jury [84] are present in the jury box.

Mr. Foreman, have you reached a verdict?

The Foreman: We have, your Honor.

The Court: Will you hand it to the Bailiff, please.

(Delivered to the Court by the Bailiff.)

The Court: The Clerk will read the verdict.

The Clerk: "We, the jury, find in favor of the plaintiff, Luisa B. Santos, and against the defendant. National Union Fire Insurance Company, a

corporation, in the sum of \$8000 for real property and \$2000 for personal property, a total of \$10,000." Dated, October 11, 1960. Signed, "John L. Gilmore," Foreman.

Ladies and gentlemen of the jury, is this your verdict, each of you?

The Jury: It is.

The Foreman: It is, your Honor.

The Court: Members of the jury, the Court wishes to thank you for the attention and diligent consideration you have given this case. You will now be excused and report back to this courtroom on Thursday morning of this week. That will be October 13, at 9:30 a.m. I know it has been rather difficult as you have experienced here, sitting on the jury, the number of interruptions we have, these beautiful chimes and aircraft and other things flying overhead, and I hope that probably some day we will have a courtroom of our own so we can conduct trials without these many interruptions. However, the jury has indicated, during the trial, their attentiveness, as the Court already mentioned, and again I want to thank you. You are now excused. [85]

Certification

District Court of Guam,
Territory of Guam—ss.

I, John E. Barnes, Official Court Reporter for the District Court of Guam, hereby certify the foregoing 85 pages to be a true and complete transcript

of the Stenographic shorthand notes taken by me in said case at the time and place as set forth therein.

/s/ JOHN E. BARNES,
Official Court Reporter.

[Endorsed]: Filed May 11, 1961. [86]

[Title of District Court and Cause.]

APPELLANT'S STATEMENT OF
POINTS RELIED UPON

National Union Fire Insurance Company, defendant-appellant in the above-entitled action, pursuant to Rule 75(d), Federal Rules of Civil Procedure, hereby states that it intends to rely upon the following points on appeal:

1. The Court erred in refusing to declare a mistrial after the opening statement of counsel for plaintiff as demanded by defendant.

2. The Court erred in refusing to dismiss this cause at the close of plaintiff's case, having before it the policy contract and the alleged sworn proof of loss, it being evident on the face of the proof of loss that it was insufficient under the policy contract to sustain the complaint.

3. The Court erred in not directing a verdict for defendant at the close of plaintiff's case.

4. The Court erred in not directing a verdict for defendant at the close of defendant's case.

5. The Court erred in giving judgment to plaintiff.

Dated this 5th day of June, 1961.

/s/ E. R. CRAIN,
Attorney for Defendant-
Appellant.

[Endorsed]: Filed June 5, 1961.

[Title of District Court and Cause.]

MINUTES OF THE COURT

1960

6-23—Notice of Motion to set cause for Pretrial Conference having been filed this day, Ordered cause placed on the Calendar for hearing on Friday, July 1, 1960, at 9:00 a.m.

7-1—Hearing (Furber):

Plaintiff appears by W. S. Barrett, Esq., her attorney.

Defendant appears by E. R. Crain, Esq., its attorney.

By agreement between counsel cause placed on the Calendar for Pretrial Conference on Tuesday, July 19, 1960, at 2:00 p.m.

7-19—Pretrial Conference (Furber):

Attorneys of record appear. Conference had. Ordered cause continued on the Calendar for

further Pretrial Conference on Thursday, July 28, 1960, at 3:00 p.m.

7-28—By agreement between counsel of record, Ordered further Pretrial Conference set ahead to Friday, July 29, 1960, at 3:00 p.m.

7-29—By agreement between counsel of record, Ordered further Pretrial Conference set ahead on Tuesday, August 2, 1960, at 10:00 a.m.

8-2—Further Pretrial Conference:

Attorneys of record appear. Conference held. Pretrial Order to be filed setting cause for Trial to Jury on Tuesday, August 30, 1960, at 9:30 a.m.

8-30—By agreement between the attorneys of record, Ordered case set ahead on the Calendar for Trial to Jury on Tuesday, October 11, 1960, at 9:30 a.m.

10-11—Trial to Jury:

Plaintiff appears in person and with W. Scott Barrett, Esquire, her attorney.

Defendant appears in person and with E. R. Crain, Esquire, his attorney.

A Jury of 12 persons is duly impaneled and sworn.

Evidence taken and Plaintiff's Exhibits Nos. 1 & 2 and Defendant's Exhibit "A" introduced in evidence without objection. Case is rested and the jury is charged and deliberates returning with a verdict in favor of the plaintiff in the sum of \$10,000.00.

11-2—Notice of Hearing on Allowance of Statutory Attorneys' Fees and Penalties, having been filed this day, Ordered cause placed on the Calendar for

4. Plaintiff's Request for Jury Trial, filed June 23, 1960.
5. Notice of Motion to set for Pretrial Conference, filed June 23, 1960.
6. Notice of Filing of list, etc., filed August 2, 1960.
7. Pretrial Order, filed August 11, 1960.
8. Verdict, filed October 11, 1960.
9. Notice of Hearing on Allowance of Statutory Attorneys' Fees and Penalties, filed November 2, 1960.
10. Opinion, filed December 15, 1960.
11. Judgment upon Verdict, entered and filed January 13, 1961.
12. Notice of Appeal, filed February 9, 1961.
13. Notice of Cross-Appeal, filed February 14, 1961.
14. Affidavit of Official Court Reporter, filed March 20, 1961.
15. Application to Extend Time for Filing Record and Docketing Appeal, filed March 20, 1961.
16. Order extending time, etc., filed March 20, 1961.
17. Affidavit of Official Court Reporter, filed May 2, 1961.
18. Application to Extend Time for Filing Record and Docketing Appeal, filed May 2, 1961.
19. Order extending time, etc., filed May 2, 1961.
20. Court Reporter's Transcript of Proceedings, filed May 11, 1961.
21. Designation of Contents of Record on Appeal, filed June 5, 1961.

